
JOURNAL
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SENATE

SESSION
OF

2008

NEW HAMPSHIRE GENERAL COURT

JOURNAL OF THE SENATE

SESSION OF 2008

VOLUME I

Senate Membership

2007-2008

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John S. Barnes, Jr.
Betsi DeVries
Robert J. Letourneau
Lou D'Allesandro
Iris W. Estabrook
Michael W. Downing
Margaret Wood Hassan
Martha Fuller Clark

** Senate President*

January 2, 2008

The Senate reconvened at 10:00 a.m., a quorum being present.

The Reverend Father Demetrios Tonias, from the Holy Trinity Greek Orthodox Church in Concord, guest chaplain to the Senate, offered the following prayer:

Let us bow our heads in prayer: We give thanks to You, Heavenly King, Eternal God and Father, who's brought us together on this most auspicious day. Hear us, Lord, our God, as we enter the new year of Your goodness and mark a new beginning here in the great State of New Hampshire, keeping our minds and souls permanently attached to the ideal of brotherhood and mutual cooperation. We offer our heartfelt prayers today for these, Your public servants, who represent for all of us models worthy of emulation in the service they offer their fellow citizens. We ask You to inspire each and every one of them to take the high road of excellence in all their duties, to advance the sacred principle of one nation under God, and with God, and to establish a political approach that attends to the needs of all Your people as they embark on a new year of public service. We fervently pray to You, Heavenly Father, let truth be their armor, Your favor their crown. Speak good to their hearts for the sake of all Your people. Permit the Senators of this esteemed, deliberative body to serve and govern in deep and enduring peace so that through the faithful conduct of their duties, we may, in turn, live peaceful and serene lives. We are reminded that, "Every soul should be subject to the governing authorities. For there is no authority except from God, and the authorities that exist are appointed by God." We beseech You, almighty God, to keep alive in these Your servants the lofty principle that the public servant is the most free lord of all and subject to none, and at the same time that the public servant is the most dutiful servant of all and subject to everyone. Amen

Sen. Gallus led the Pledge of Allegiance.

Sen. Burling is excused for the day.

INTRODUCTION OF GUESTS

Senate Page: George Seigel, Bishop Brady High School.

Senate Page: Tyler Penney, Bishop Brady High School.

NEW STAFF FOR THE 2008 LEGISLATIVE SESSION

Claire Emery, Senate Secretary

Amanda Jurta, Senate Secretary

Cathy Mullen, Senate Secretary

Marty Feller-Cote, Senate Secretary

Nese Farrell, Senate Secretary

SENATE RULES

SENATOR FOSTER: I move to amend Senate Rule 18 (b) which we have before us today.

Sen. Foster moved to amend Senate Rule 18 (b).

Amendment to Senate Rule 18 (b)

Amend Senate Rule 18 (b) by replacing with the following:

18. Drafting of Bills

(b) Notwithstanding the provisions of 17, a Senate bill, Senate joint resolution, or Senate concurrent resolution may be accepted by Legislative Services for drafting and introduced into the Senate at any time prior

to the deadline established by Senate Rules for the transfer of bills out of the first body if approved by either a majority of the Senate Rules Committee or a two-thirds vote on the floor.

OLD LANGUAGE

LANGUAGE TO BE DELETED IS STRUCK OUT

18. Drafting of Bills

(b) Notwithstanding the provisions of 17 ~~(a), (b), and (c)~~, a Senate bill, Senate joint resolutions, or Senate concurrent resolution may be accepted by Legislative Services for drafting and introduced into the Senate at any time prior to the deadline established by Senate Rules for the transfer of bills out of the first body if approved by either a majority of the Senate Rules Committee or a two-thirds vote on the floor.

Motion to Amend adopted by the necessary 2/3 vote.

SENATE RULES

SENATOR FOSTER: I move to amend Senate Rule 29, Senate Standing Committees, which we have before us today.

Sen. Foster moved to amend Senate Rule 29, Senate Standing Committees.

Amendment to Senate Rule 29

The new language is bold, italicized, and underlined

Amend Senate Rule 29 by replacing with the following:

29. The standing committees of the Senate shall be as follows: the Committee on Capital Budget, the Committee on Commerce, Labor and Consumer Protection, the Committee on Education, the Committee on Election Law and Internal Affairs, the Committee on Energy, Environment and Economic Development, the Committee on Executive Departments and Administration, the Committee on Finance, the Committee on Health and Human Services, the Committee on Judiciary, the Committee on Public and Municipal Affairs, the Committee on Rules and Enrolled Bills, the Committee on Transportation and Interstate Cooperation, the Committee on Ways and Means and the Committee on Wildlife, Fish and Game and ***Agriculture***.

Motion to Amend adopted by the necessary 2/3 vote.

SENATE RULES

SENATOR FOSTER: Thank you, Madam President. I move to amend Senate Rule 48, Senate Deadlines, which we have before us today.

Sen. Foster moved to amend Senate Rule 48, Senate Deadlines.

Amendment to Senate Rule 48

Amend Senate Rule 48 by replacing with the following:

48. Deadlines:

(a) Monday, September 10, 2007 – First day to file legislation for 2008 Session

(b) The Office of Legislative Services shall not draft a Senate Bill or Resolution, unless a request by a member for drafting with complete information has been received not later than 5:00 p.m., Wednesday, October 24, 2007, for the 2008 Session

(c) The last day to sign-off legislation for the above filing period shall be Wednesday, November 21, 2007, at 12:00 p.m.

(d) The last day to sign-off legislation for a Senate Bill recommended by a Study Committee or Commission created by a Senate Bill shall be no later than 3:00 p.m. on Tuesday, January 15, 2008

(e) Thursday, March 06, 2008 - Deadline for Policy Committees to ACT on all Senate money bills, except bills exempted pursuant to Senate Rule 26(b)

(f) Thursday, March 20, 2008 - CROSSOVER – Last Day to ACT on all remaining Senate Bills

(g) Thursday, May 1, 2008 - Deadline for Policy Committees to ACT on all House money bills, except bills exempted pursuant to Senate Rule 26(b)

(h) Thursday, May 15, 2008 – Last Day to ACT on all remaining House bills

(i) Wednesday, May 21, 2008 - Last day to FORM Committees of Conference

(j) Friday, May 30, 2008 at 12:00 p.m. - Last day to SIGN Committee of Conference Reports

(k) Thursday, June 5, 2008 - Last day to ACT on Committee of Conference Reports

Motion to Amend adopted by the necessary 2/3 vote.

INTRODUCTION OF SENATE BILL(S)

Sen. Foster offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Senate Clerk, Senate legislation numbered from **SB 300** to **SB 459** and **CACR 31**, **CACR 32**, and **SCR 5**, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

Resolution adopted.

First and Second Reading and Referral

08-2039

SB 300-FN-A, relative to death benefits for corrections officers killed in the line of duty. (Clegg, Dist 14; Gatsas, Dist 16; Barnes, Dist 17; Bettencourt, Rock 4; Baldasaro, Rock 3; Carson, Rock 3; Marshall Quandt, Rock 13; Welch, Rock 8: Executive Departments and Administration)

08-2041

SB 301-FN, requiring insurers to cover prescriptions filled near the patient's residence. (Clegg, Dist 14; Fuller Clark, Dist 24; Hassan, Dist 23; Downing, Dist 22: Commerce, Labor and Consumer Protection)

08-2072

SB 302-FN, relative to parental notification. (Barnes, Dist 17; Gallus, Dist 1; Kenney, Dist 3; Roberge, Dist 9; Bragdon, Dist 11; Clegg, Dist 14; Gatsas, Dist 16; Letourneau, Dist 19; Downing, Dist 22; Mooney, Hills 19; Kappler, Rock 2: Judiciary)

08-2096

SB 303-FN, relative to special number plates. (Clegg, Dist 14; Gatsas, Dist 16; Barnes, Dist 17; Kenney, Dist 3; Letourneau, Dist 19; Gallus, Dist 1; Odell, Dist 8; Downing, Dist 22; Burling, Dist 5; Reynolds, Dist 2; DeVries, Dist 18; Cilley, Dist 6; Hassan, Dist 23; Sgambati, Dist 4; Kelly, Dist 10; Renzullo, Hills 27; Bettencourt, Rock 4; Baldasaro, Rock 3; Carson, Rock 3; Marshall Quandt, Rock 13: Transportation and Interstate Cooperation)

08-2282

SB 304-FN-LOCAL, repealing a fee charged by the registry of deeds. (Gallus, Dist 1; Clegg, Dist 14; D'Allesandro, Dist 20; Letourneau, Dist 19; Stohl, Coos 1: Finance)

08-2352

SB 305-FN, relative to the regulation of private investigators. (Clegg, Dist 14: Executive Departments and Administration)

08-2629

SB 307-FN-LOCAL, exempting Purple Heart plate recipients from number plate and registration fees. (Odell, Dist 8; Barnes, Dist 17; P. McMahon, Merr 3: Transportation and Interstate Cooperation)

08-2634

SB 308-FN-A, restoring certain foreign dividend deductions under the business profits tax and an exemption to the real estate transfer tax. (Foster, Dist 13; Odell, Dist 8: Ways and Means)

08-2641

SB 309-FN, relative to the regulation of amateur and professional fighting sports by the boxing and wrestling commission. (D'Allesandro, Dist 20; John Thomas, Belk 5: Executive Departments and Administration)

08-2643

SB 310-FN, relative to changes to games of chance. (D'Allesandro, Dist 20; F. Sullivan, Hills 12: Ways and Means)

08-2644

SB 311-FN, extending the statute of limitations for civil actions based upon a sexual assault case. (D'Allesandro, Dist 20; Roberge, Dist 9; Gottesman, Dist 12; Wall, Straf 7; G. Richardson, Merr 4; Drisko, Hills 5; Mooney, Hills 19: Judiciary)

08-2653

SB 313, relative to transfers to the revenue stabilization reserve account. (Gatsas, Dist 16; Barnes, Dist 17; Clegg, Dist 14; Gallus, Dist 1; Kenney, Dist 3; Letourneau, Dist 19; Roberge, Dist 9; Whalley, Belk 5; Weyler, Rock 8: Finance)

08-2656

SB 315, preventing the fraudulent use of the names of financial institutions. (DeVries, Dist 18; Clegg, Dist 14; Hunt, Ches 7; DeStefano, Merr 13: Commerce, Labor and Consumer Protection)

08-2658

SB 316-FN, expanding a death benefit for police officers and firefighters to emergency medical technicians. (Burling, Dist 5; D'Allesandro, Dist 20; Welch, Rock 8: Executive Departments and Administration)

08-2665

SB 317-FN, relative to the retail sale of tobacco products. (Gottesman, Dist 12; Harding, Graf 11: Executive Departments and Administration)

08-2672

SB 318-FN, relative to licensed veterinary assistant practitioners. (Cilley, Dist 6; Phinizy, Sull 5; Essex, Hills 1; Snow, Rock 1: Executive Departments and Administration)

08-2679

SB 319-FN, relative to third party liability and state recovery of public assistance. (D'Allesandro, Dist 20; Sgambati, Dist 4; Fuller Clark, Dist 24; Gallus, Dist 1; Kenney, Dist 3: Commerce, Labor and Consumer Protection)

08-2680

SB 320-FN, relative to unauthorized payment of public assistance. (D'Allesandro, Dist 20: Health and Human Services)

08-2681

SB 321, relative to transfers to the revenue stabilization reserve account. (D'Allesandro, Dist 20; Janeway, Dist 7; Sgambati, Dist 4; Odell, Dist 8; Gallus, Dist 1; Major, Rock 8: Finance)

08-2683

SB 322, relative to lists of professional bondsmen. (Barnes, Dist 17; Itse, Rock 9: Executive Departments and Administration)

08-2713

SB 328, relative to civil forfeitures for certain waste disposal violations. (Cilley, Dist 6; Reynolds, Dist 2; Clegg, Dist 14; Wall, Straf 7; DiFruscia, Rock 4; Bettencourt, Rock 4: Energy, Environment and Economic Development)

08-2721

SB 329, relative to the payment of retired judges serving on screening panels for medical injury claims. (Foster, Dist 13: Judiciary)

08-2748

SB 333-FN-A-LOCAL, establishing an exemption from the real estate transfer tax. (Reynolds, Dist 2; Friedrich, Graf 6: Ways and Means)

08-2750

SB 334-FN, relative to undue influence on real estate appraisals and relative to the quorum of the real estate appraiser's board. (Gallus, Dist 1; Roberge, Dist 9; Emerton, Hills 7; Ingram, Rock 4: Executive Departments and Administration)

08-2754

SB 335, allowing certain judges to terminate membership in the judicial retirement plan and elect senior active status. (Gottesman, Dist 12; D. Cote, Hills 23: Executive Departments and Administration)

08-2758

SB 336-FN, relative to special number plates for veterans who are former prisoners of war. (Barnes, Dist 17; Burling, Dist 5; Cilley, Dist 6; Clegg, Dist 14; D'Allesandro, Dist 20; DeVries, Dist 18; Downing, Dist 22; Estabrook, Dist 21; Foster, Dist 13; Fuller Clark, Dist 24; Gallus, Dist 1; Gatsas, Dist 16; Gottesman, Dist 12; Hassan, Dist 23; Kelly, Dist 10; Kenney, Dist 3; Letourneau, Dist 19; Odell, Dist 8; Reynolds, Dist 2; Roberge, Dist 9; Sgambati, Dist 4: Transportation and Interstate Cooperation)

08-2763

SB 337-FN, relative to home education of children. (Estabrook, Dist 21; Foster, Dist 13; Fuller Clark, Dist 24; Rous, Straf 7; Dunn, Ches 3: Education)

08-2772

SB 338, relative to the Hampton Beach capital improvement fund. (Fuller Clark, Dist 24; Hassan, Dist 23: Capital Budget)

08-2776

SB 339-FN-A, relative to per pupil funding for charter school pupils. (Fuller Clark, Dist 24; Casey, Rock 11: Education)

08-2777

SB 340-FN-A-LOCAL, requiring a transportation stipend for charter school pupils. (Fuller Clark, Dist 24; Casey, Rock 11; Stiles, Rock 15: Education)

08-2780

SB 341, prohibiting digital advertising devices on certain highways. (Fuller Clark, Dist 24; Janeway, Dist 7; Cilley, Dist 6; Clegg, Dist 14; Borden, Rock 18; Powers, Rock 16; Grote, Rock 18; Kurk, Hills 7: Transportation and Interstate Cooperation)

08-2797

SB 343-FN, authorizing charter schools to apply for and receive school building aid. (Hassan, Dist 23; Fuller Clark, Dist 24; Cilley, Dist 6; Barnes, Dist 17; Stiles, Rock 15; Weyler, Rock 8: Education)

08-2800

SB 345, prohibiting hospitals from requiring insurance coverage for organ donations and organ transplants. (Kenney, Dist 3; Crane, Hills 21: Commerce, Labor and Consumer Protection)

08-2817

SB 347, establishing a commission to study making changes to the New Hampshire accountancy act. (D'Allesandro, Dist 20; Kenney, Dist 3: Executive Departments and Administration)

08-2828

SB 349, allowing continuation of judicial retirement plan benefits for judges called to full-time active military duty. (Foster, Dist 13: Executive Departments and Administration)

08-2835

SB 350-FN, extending the surcharge on probate court entry fees to judicial branch family division cases which would previously have been brought in probate court. (Foster, Dist 13; Dokmo, Hills 6: Judiciary)

08-2842

SB 351-FN, requiring that funds in the civil legal services fund be distributed to New Hampshire Legal Assistance to establish an office at a location in Carroll county. (Kenney, Dist 3; Knox, Carr 4; Carolyn Brown, Carr 1: Judiciary)

08-2848

SB 352-FN, relative to shoreland protection. (Fuller Clark, Dist 24; Hassan, Dist 23; Cilley, Dist 6; Borden, Rock 18; Grote, Rock 18; Spang, Straf 7: Energy, Environment and Economic Development)

08-2855

SB 353-FN-LOCAL, relative to illegal aliens. (Kenney, Dist 3; Letourneau, Dist 19; Carolyn Brown, Carr 1; Baldasaro, Rock 3; Renzullo, Hills 27; Crane, Hills 21: Judiciary)

08-2862

SB 356-FN, prohibiting offenders against children from attending certain activities or events. (Kenney, Dist 3; Crane, Hills 21: Judiciary)

08-2040

SB 357, relative to the examination of acts and resolves before printing. (Clegg, Dist 14; Gatsas, Dist 16; Barnes, Dist 17; Kenney, Dist 3; Gallus, Dist 1; Marshall Quandt, Rock 13; Carson, Rock 3; Renzullo, Hills 27: Rules and Enrolled Bills)

08-2098

SB 358, relative to mooring permits. (Letourneau, Dist 19; Cilley, Dist 6; Burling, Dist 5; Wickson, Rock 5; Bishop, Rock 2; Snow, Rock 1: Transportation and Interstate Cooperation)

08-2118

SB 359, updating the health curriculum requirements for public school students. (Foster, Dist 13; Sgambati, Dist 4; Rosenwald, Hills 22: Education)

08-2173

SB 360, relative to local enforcement of the state building code. (Clegg, Dist 14; D'Allesandro, Dist 20; Cilley, Dist 6; Gatsas, Dist 16; Downing, Dist 22; Hawkins, Hills 18; Headd, Rock 3; Irwin, Hills 3; Reagan, Rock 1: Public and Municipal Affairs)

08-2228

SB 361, relative to the widening of Interstate 93. (Letourneau, Dist 19: Transportation and Interstate Cooperation)

08-2239

SB 362, relative to the responsibility for providing a free appropriate public education to students with disabilities. (Letourneau, Dist 19; P. Katsakiores, Rock 5; G. Katsakiores, Rock 5; Casey, Rock 11: Education)

08-2388

SB 363, requiring youth operators and passengers of OHRVs and snowmobiles to wear approved protective headgear. (Barnes, Dist 17; Letourneau, Dist 19: Transportation and Interstate Cooperation)

08-2598

SB 364, relative to vehicle weight tolerance. (Letourneau, Dist 19; Clegg, Dist 14; Packard, Rock 3; Rausch, Rock 5; Wickson, Rock 5; Ryan, Merr 2; Ferland, Sull 5: Transportation and Interstate Cooperation)

08-2624

SB 365, relative to testing for lead toxicity in children 4 years of age or younger. (Gallus, Dist 1; Gatsas, Dist 16; Clegg, Dist 14; Roberge, Dist 9; Barnes, Dist 17; Downing, Dist 22; Kenney, Dist 3; Letourneau, Dist 19; Odell, Dist 8; Stephanie Eaton, Graf 1; Carolyn Brown, Carr 1; Theberge, Coos 4; Weyler, Rock 8: Health, Human Services and Elderly Affairs)

08-2625

SB 366, relative to the operation of the state suggestion and extraordinary service award program. (Downing, Dist 22; Bettencourt, Rock 4: Executive Departments and Administration)

08-2626

SB 367, relative to the date of the final property tax bill in municipalities that bill quarterly. (DeVries, Dist 18; Pilote, Hills 16; Patten, Carr 4: Public and Municipal Affairs)

08-2627

SB 368, relative to exemptions for toxics reduction in packaging. (DeVries, Dist 18; Messier, Hills 17; Beaulieu, Hills 17: Energy, Environment and Economic Development)

08-2628

SB 369, relative to the towing and storage of motor vehicles. (DeVries, Dist 18; Patten, Carr 4; Pilote, Hills 16: Commerce, Labor and Consumer Protection)

08-2631

SB 370, relative to emergency powers of the supreme court. (Foster, Dist 13: Judiciary)

08-2639

SB 371, making various changes to the city of Manchester employees' contributory retirement system. (D'Allesandro, Dist 20; F. Sullivan, Hills 12: Public and Municipal Affairs)

08-2640

SB 372, relative to the state building code and the membership of the heating system certification advisory committee. (D'Allesandro, Dist 20; Clegg, Dist 14: Executive Departments and Administration)

08-2645

SB 373, relative to dental insurance coverage for members of the Manchester employees' contributory retirement system. (D'Allesandro, Dist 20; F. Sullivan, Hills 12: Public and Municipal Affairs)

08-2648

SB 374, relative to the process for nonrenewal of teacher contracts. (Cilley, Dist 6; Dunn, Ches 3: Education)

08-2649

SB 375-LOCAL, allowing veterinarians to inform town and city clerks about dogs that have been euthanized. (Roberge, Dist 9; Kelly, Dist 10; Barnes, Dist 17; D'Allesandro, Dist 20; Gatsas, Dist 16; Burrridge, Ches 3; Mooney, Hills 19; B. Richardson, Ches 5; Skinder, Sull 1: Public and Municipal Affairs)

08-2651

SB 376, requiring local fire chiefs to report annually to the state fire marshal on the safety of school buildings. (Kelly, Dist 10; Estabrook, Dist 21; Hassan, Dist 23; Burling, Dist 5: Education)

08-2652

SB 377, relative to the application of the prudent investor rule to town trust funds. (Burling, Dist 5; Hassan, Dist 23; Sgambati, Dist 4; Barnes, Dist 17: Public and Municipal Affairs)

08-2654

SB 378, establishing a committee to study the creation of a business court at the superior court level. (Burling, Dist 5; Foster, Dist 13; Hassan, Dist 23; Reynolds, Dist 2; Cilley, Dist 6; Fuller Clark, Dist 24: Judiciary)

08-2657

SB 379, relative to boating while intoxicated and transporting alcoholic beverages by a minor. (Letourneau, Dist 19; Clegg, Dist 14; Barnes, Dist 17; Packard, Rock 3; Waterhouse, Rock 4: Judiciary)

08-2661

SB 380, relative to petitions for boating rules. (Clegg, Dist 14; Chandler, Carr 1; Baldasaro, Rock 3; Marshall Quandt, Rock 13; Emerton, Hills 7; Daniels, Hills 6: Transportation and Interstate Cooperation)

08-2662

SB 381, relative to conservation commissions. (Burling, Dist 5; Barnes, Dist 17; Cilley, Dist 6; Clegg, Dist 14; Janeway, Dist 7; Kenney, Dist 3; Odell, Dist 8; Reynolds, Dist 2; Roberge, Dist 9; Sgambati, Dist 4; Jillette, Sull 2; Franklin, Sull 2: Public and Municipal Affairs)

08-2664

SB 382, relative to gasoline and diesel fuel prices. (Burling, Dist 5; Reynolds, Dist 2: Energy, Environment and Economic Development)

08-2670

SB 383, establishing a commission to develop a plan for the expansion of transmission capacity in the North country. (Fuller Clark, Dist 24; Hassan, Dist 23; Cilley, Dist 6: Energy, Environment and Economic Development)

08-2674

SB 384, relative to the repair of septic systems prior to the sale of waterfront property. (Sgambati, Dist 4; Janeway, Dist 7; Cilley, Dist 6; Fuller Clark, Dist 24; Odell, Dist 8; Wheeler, Merr 6; Millham, Belk 5; Wood, Belk 4; Pilliod, Belk 5; Spang, Straf 7: Energy, Environment and Economic Development)

08-2676

SB 385, requiring pharmacies to report an inability to fill prescriptions. (Cilley, Dist 6; Sgambati, Dist 4; Fuller Clark, Dist 24; DeVries, Dist 18; Miller, Straf 7; J. Tilton, Merr 6; Pilliod, Belk 5: Executive Departments and Administration)

08-2677

SB 386, relative to service territories served by several telephone utilities. (Gottesman, Dist 12; Levesque, Hills 5; Spratt, Hills 3: Energy, Environment and Economic Development)

08-2682

SB 387, relative to forfeiture of recognizances. (Barnes, Dist 17: Judiciary)

08-2684

SB 388, relative to commercial driver license qualifications. (Barnes, Dist 17: Transportation and Interstate Cooperation)

08-2688

SB 389, relative to the protection of children's medical records in abuse and neglect and child custody cases. (Sgambati, Dist 4; Odell, Dist 8; Estabrook, Dist 21; Burling, Dist 5; Julie Brown, Straf 1; Arsenault, Belk 4; B. Richardson, Ches 5; Hager, Merr 12; Dokmo, Hills 6: Judiciary)

08-2689

SB 390, establishing a suicide prevention council. (Sgambati, Dist 4; Estabrook, Dist 21; Hassan, Dist 23; Janeway, Dist 7; Letourneau, Dist 19; MacKay, Merr 11; Arsenault, Belk 4; Hager, Merr 12; Donovan, Sull 4: Health, Human Services)

08-2692

SB 391, relative to affordable health insurance for small employers. (Sgambati, Dist 4; Fuller Clark, Dist 24; Hassan, Dist 23; Janeway, Dist 7; Reynolds, Dist 2; Burling, Dist 5; McLeod, Graf 2; Nord, Rock 1; Butler, Carr 1; Foster, Hills 4; Nordgren, Graf 9: Commerce, Labor and Consumer Protection)

08-2693

SB 392, relative to recovery of child support payments. (Sgambati, Dist 4; Estabrook, Dist 21; Moran, Hills 18; Donovan, Sull 4; McLeod, Graf 2; Pilliod, Belk 5: Judiciary)

08-2696

SB 393, allowing dental hygienists to engage in independent practice. (Sgambati, Dist 4; Cilley, Dist 6; Fuller Clark, Dist 24; Gallus, Dist 1; McLeod, Graf 2; Reagan, Rock 1; Donovan, Sull 4: Executive Departments and Administration)

08-2700

SB 394, establishing an economic development advisory council. (Hasan, Dist 23; Spang, Straf 7; Reardon, Merr 11; Buco, Carr 1: Energy, Environment and Economic Development)

08-2703

SB 395, establishing a commission to review New Hampshire's statutes on human immunodeficiency virus education, prevention, and control. (Estabrook, Dist 21; Fuller Clark, Dist 24; Gallus, Dist 1; MacKay, Merr 11; Rosenwald, Hills 22; Schulze, Hills 26; Pilliod, Belk 5; French, Merr 5: Health and Human Services)

08-2712

SB 396, relative to the establishment of a statewide transportation policy. (Kelly, Dist 10; Fuller Clark, Dist 24; Janeway, Dist 7: Transportation and Interstate Cooperation)

08-2714

SB 397, relative to mail-in rebates for merchandise purchased within the state. (Foster, Dist 13; Clegg, Dist 14; Reynolds, Dist 2: Commerce, Labor and Consumer Protection)

08-2715

SB 398, establishing a committee to study municipal boundaries and the laws pertaining to these boundaries. (Gallus, Dist 1; Odell, Dist 8; Bouchard, Merr 11; King, Coos 1; Theberge, Coos 4: Public and Municipal Affairs)

08-2718

SB 399, permitting annulment of certain criminal records in the supreme court. (Foster, Dist 13; W. Knowles, Straf 6: Judiciary)

08-2719

SB 400, relative to the authority of bail commissioners. (Foster, Dist 13; W. Knowles, Straf 6: Judiciary)

08-2722

SB 401, relative to recommendations of marital masters. (Foster, Dist 13; Dokmo, Hills 6; D. Cote, Hills 23: Judiciary)

08-2725

SB 402, relative to large groundwater permitting requirements for wells installed prior to 1998. (Cilley, Dist 6; Fuller Clark, Dist 24; Spang, Straf 7; Moody, Rock 12; Beaulieu, Hills 17; Buco, Carr 1: Energy, Environment and Economic Development)

08-2726

SB 403, relative to large withdrawals of water from aquifers within municipal boundaries. (Cilley, Dist 6; Fuller Clark, Dist 24; Buco, Carr 1; Case, Rock 1: Energy, Environment and Economic Development)

08-2727

SB 404, allowing dental school graduates to practice in an approved dental residency program. (Cilley, Dist 6; Sgambati, Dist 4; Gatsas, Dist 16; Clegg, Dist 14; Burling, Dist 5; Emerton, Hills 7; MacKay, Merr 11; Pilotte, Hills 16; Rosenwald, Hills 22; Harding, Graf 11: Executive Departments and Administration)

08-2728

SB 405, establishing a committee to study driver's license revocation and continuous alcohol monitoring. (Kenney, Dist 3: Judiciary)

08-2729

SB 406, relative to exempting the town of Wakefield from the setback requirements of the shoreland protection act. (Kenney, Dist 3: Energy, Environment and Economic Development)

08-2730

SB 407, establishing a committee to study the right of entry upon lands for purposes of conducting a land survey. (Burling, Dist 5; Cilley, Dist 6; DeVries, Dist 18; Kenney, Dist 3; Odell, Dist 8; Reynolds, Dist 2; Roberge, Dist 9; Sgambati, Dist 4; Clegg, Dist 14: Public and Municipal Affairs)

08-2731

SB 408, establishing a committee to study reverse mortgages. (Roberge, Dist 9; Gatsas, Dist 16; Barnes, Dist 17; Odell, Dist 8; Sgambati, Dist 4; Wendelboe, Belk 1; Batula, Hills 19: Commerce, Labor and Consumer Protection)

08-2734

SB 409, relative to conservation and preservation restrictions. (Janeway, Dist 7; Fuller Clark, Dist 24: Energy, Environment and Economic Development)

08-2739

SB 410, relative to the conditions for issuance of a death certificate. (D'Allesandro, Dist 20; Sgambati, Dist 4; Fuller Clark, Dist 24; Gallus, Dist 1: Executive Departments and Administration)

08-2746

SB 412, establishing the office of technology development and telecommunications planning and the position of director of telecommunications in the department of resources and economic development. (Reynolds, Dist 2; Burling, Dist 5: Energy, Environment and Economic Development)

08-2753

SB 413, authorizing the department of resources and economic development to retain the administrative fee for certain disposals of state lands. (Gallus, Dist 1; Chandler, Carr 1; Cloutier, Sull 4; Rausch, Rock 5: Executive Departments and Administration)

08-2760

SB 414, authorizing special elections to fill vacancies on local boards. (Barnes, Dist 17: Public and Municipal Affairs)

08-2761

SB 415, relative to the effective date of the compulsory school attendance law. (Estabrook, Dist 21; Foster, Dist 13; Fuller Clark, Dist 24; Burling, Dist 5; D'Allesandro, Dist 20; Cilley, Dist 6; Kelly, Dist 10; Sgambati, Dist 4; Hassan, Dist 23; DeVries, Dist 18; Gottesman, Dist 12; Larsen, Dist 15; Janeway, Dist 7; Reynolds, Dist 2: Education)

08-2770

SB 416, relative to subdivision and site plan regulation waivers. (Fuller Clark, Dist 24; Sgambati, Dist 4; Cilley, Dist 6; Burling, Dist 5: Public and Municipal Affairs)

08-2771

SB 417, relative to changes to the shoreland protection act. (Fuller Clark, Dist 24; Borden, Rock 18; J. Day, Rock 13; Grote, Rock 18: Energy, Environment and Economic Development)

08-2774

SB 418, changing the name of charter schools to “innovative public schools.” (Fuller Clark, Dist 24; Casey, Rock 11: Education)

08-2782

SB 419, relative to the duties of the energy planning and advisory board and restructuring policy principles. (Downing, Dist 22; Clegg, Dist 14; Odell, Dist 8; Bettencourt, Rock 4: Energy, Environment and Economic Development)

08-2784

SB 420, relative to criminal background checks of health care facilities. (Fuller Clark, Dist 24; Hassan, Dist 23; Burling, Dist 5; Donovan, Sull 4; Pilotte, Hills 16; Shurtleff, Merr 10; MacKay, Merr 11: Executive Departments and Administration)

08-2785

SB 421-LOCAL, requiring municipal land use regulation to provide reasonable opportunities for the creation of workforce housing. (Fuller Clark, Dist 24; Larsen, Dist 15; Reynolds, Dist 2; Burling, Dist 5; DeVries, Dist 18; Foster, Dist 13; Hassan, Dist 23; Cilley, Dist 6: Public and Municipal Affairs)

08-2789

SB 423, relative to cashing of bingo winnings checks. (Kenney, Dist 3: Ways and Means)

08-2790

SB 424, relative to prohibiting ATV and trail bike use on state-owned rail trails acquired using federal funds. (Cilley, Dist 6; Fuller Clark, Dist 24; Barnes, Dist 17; Spang, Straf 7; P. McMahon, Merr 3; Snow, Rock 1; Brueggemann, Merr 12: Transportation and Interstate Cooperation)

08-2791

SB 425, relative to the data collection practices of health care providers. (Hassan, Dist 23; Fuller Clark, Dist 24; Cilley, Dist 6; Sgambati, Dist 4; Bergin, Hills 6; McLeod, Graf 2; Nord, Rock 1: Health and Human Services)

08-2793

SB 426, establishing a committee to study the current definition of the term “community benefit” applicable to nonprofit health care providers. (Hassan, Dist 23; Sgambati, Dist 4; Fuller Clark, Dist 24; Kelly, Dist 10; Odell, Dist 8; Nord, Rock 1; Bergin, Hills 6; Butler, Carr 1; J. Hammond, Hills 3: Commerce, Labor and Consumer Protection)

08-2801

SB 427, requiring hospitals to report on their standards and criteria for organ donations and transplants. (Kenney, Dist 3; Crane, Hills 21: Health and Human Services)

08-2802

SB 428, establishing a commission to study the funding of vaccines for children who are not covered by private health insurance and repealing an assessment for the cost of vaccines. (Kenney, Dist 3: Health and Human Services)

08-2803

SB 429, relative to driver education courses in other states. (Kenney, Dist 3; Buco, Carr 1: Transportation and Interstate Cooperation)

08-2805

SB 430, relative to cemeteries and mausoleums. (Downing, Dist 22; Belanger, Rock 4; Dalrymple, Rock 4; DiFruscia, Rock 4; Ingram, Rock 4: Executive Departments and Administration)

08-2808

SB 431, naming a small impoundment in Goffstown as Namaske Lake. (D'Allesandro, Dist 20; Emerton, Hills 7; Kurk, Hills 7; R. Day, Hills 7: Public and Municipal Affairs)

08-2810

SB 432, relative to workers' compensation for employee leasing companies. (Clegg, Dist 14: Commerce, Labor and Consumer Protection)

08-2811

SB 433, relative to confidential communications between a physician and a patient. (Foster, Dist 13; W. Knowles, Straf 6: Judiciary)

08-2812

SB 434, relative to providers of electronic communication services. (Janeway, Dist 7; W. Knowles, Straf 6: Energy, Environment and Economic Development)

08-2813

SB 435, relative to fill and dredge permits in wetlands. (Janeway, Dist 7: Energy, Environment and Economic Development)

08-2820

SB 438, relative to contractor accountability and disclosure in the public works construction procurement process. (Clegg, Dist 14; Larsen, Dist 15; Abbott, Rock 12; Baldasaro, Rock 3; Marshall Quandt, Rock 13; Emerton, Hills 7; Daniels, Hills 6: Executive Departments and Administration)

08-2821

SB 439, relative to money transmitters and mortgage servicing companies. (Gottesman, Dist 12: Commerce, Labor and Consumer Protection)

08-2822

SB 440, relative to requiring occupational boards and commissions to include relevant military experience or training in satisfying requirements for engaging in a regulated profession. (Cilley, Dist 6; Clegg, Dist 14; Kenney, Dist 3; Downing, Dist 22; Burling, Dist 5; Hawkins, Hills 18: Executive Departments and Administration)

08-2826

SB 441, relative to collective bargaining by judicial employees. (Foster, Dist 13: Executive Departments and Administration)

08-2827.0

SB 442-FN, requiring that the proceeds of fees for motions to appear in court pro hac vice be paid into the law library revolving fund. (Foster, Dist 13; Dokmo, Hills 6: Finance)

08-2830

SB 443, requiring notice to the probate court prior to the sale of real estate by an administrator or executor. (Foster, Dist 13: Judiciary)

08-2831

SB 444, relative to settlements on behalf of minors and judgments and decrees in favor of minors. (Foster, Dist 13: Judiciary)

I. Any corporation or limited liability company may elect to exclude up to 3 executive officers or members from the compulsive coverage requirements under this chapter[; ~~provided, that such exclusion shall not apply to any individual, regardless of status or title within a corporation or limited liability company, who is actively engaged in on-site work on any construction site within the state of New Hampshire.~~]

2 Certification of Current Workers' Compensation Coverage Required. Amend the introductory paragraph of RSA 228:4-b, I to read as follows:

I. Prior to any work being done by an individual contractor on any state transportation project carried out under this subdivision, such contractor, including all subcontractors and independent contractors, working on a highway, bridge, or other construction, reconstruction, alteration, or maintenance project, ***excluding routine maintenance operations conducted utilizing the contract rental agreement process***, funded by the department shall provide to the commissioner of transportation:

3 Workers' Compensation; Policy Cancellation and Return of Premium.

I. Insurance coverage on up to 3 executive officers or members of a corporation or limited liability company purchased solely to meet the requirements of RSA 281-A:18-a, I, as amended by 2007, 323:1 and which became effective September 14, 2007, may be cancelled or removed at the request of the insured.

II. Insurers returning premium pursuant to the cancellation or removal of coverage under paragraph I shall calculate the return premium amount using, at a minimum, a pro-rata methodology. Such a methodology shall result in a return premium no less than an amount which fully reflects that unexpired portion of the full term policy premium for which no insurance coverage will be provided. Insurers shall not calculate the return premium amount using any methodology which "short-rates" or otherwise penalizes the insured.

III. As a condition of cancellation or removal of coverage, the insurer may require the insured to provide a "loss-free" letter, which indicates:

(a) The names of any person or persons being excluded from coverage.

(b) The date coverage is to cease.

(c) An attestation that any person or persons to be excluded are not aware of any injuries or other claims that have occurred during the term of coverage and which have not yet been reported to the insurer.

4 Effective Date. This act shall take effect upon its passage.

2008-0009s

AMENDED ANALYSIS

This bill:

I. Clarifies the law regarding an exclusion from workers' compensation for certain officers or members of corporations and limited liability companies.

II. Excludes persons performing routine maintenance operations on certain state projects from the requirement of providing certification of current workers' compensation coverage.

III. Authorizes certain insureds who purchased workers' compensation insurance coverage to comply with the requirements of 2007, 323:1 to request that insurers return a portion of the policy premium.

SENATOR HASSAN: Thank you, Madam President. I move House Bill 692 ought to pass as amended. The amendment to House Bill 692, approved unanimously by the Public and Municipal Affairs Committee, deletes the bill's original phrasing and inserts language which will repeal and replace

certain language from House Bill 471 passed last session. Since learning of the unintended and certainly undesirable consequences associated with the legislation in late September, Democrats and Republicans in both the House and Senate have been working to achieve a fair, responsible, and appropriate resolution to the problems attributed to House Bill 471. It is my understanding, and I believe all of my Senate colleagues agree, that as amended, House Bill 692 is such a solution. The amended version of House Bill 692 repeals section 1 of House Bill 471 which eliminated the workers' compensation exclusions for three or fewer officers or executives of a corporation or LLC. House Bill 692, as amended, also addresses certain ambiguities created by section 2 of House Bill 471, exempting from its provisions, certain routine road maintenance activities such as snowplowing and grass mowing. The amended version of House Bill 692 also establishes parameters for the return of certain workers' compensation premiums to those who will no longer need such insurance once this amended bill becomes law. The purpose of this part of the amended bill is to allow businesses that purchased workers' compensation insurance, in order to comply with the provisions of House Bill 471, to get, at a minimum, a full refund of premiums paid for future coverage that will no longer be required in the event that House Bill 692, as amended, becomes law.

Because the original intent of House Bill 471 has perhaps not been entirely or accurately understood, I think it is necessary and important to explain the genesis of the legislation. House Bill 471 was a result of a bipartisan, bicameral study committee, and was passed with strong bipartisan voice votes in both the House and the Senate. Despite this bipartisan support, it is now clear that the bill casts too wide a net and inadvertently imposed significant costs and increases – I'm sorry, significant cost increases on legitimate small construction and construction-related businesses. Unfortunately, none of these unintended consequences were pointed out during the legislative hearing on the bill, perhaps because much of the bill was aimed at particular circumstances occurring on public building projects, so that those reading the bill, simply did not understand its full impact. The bill was intended to crack down on construction contractors who have been abusing the workers' compensation system. These contractors were giving themselves an unfair competitive advantage over legitimate businesses by insisting that the workers they hire call themselves "independent contractors," and, further, by insisting that those workers form corporations, and claim themselves as officers of the corporation so that the workers would be excluded from workers' compensation coverage. This left the workers without coverage in the event of an injury, and also meant that those contractors were able to submit lower bids on projects, because they didn't have to carry workers' compensation costs in their overhead. It was never our intent to require every small business owner in the construction industry to purchase workers' compensation coverage for themselves for every project they work on. I believe that our actions today will ease the unforeseen and regrettable difficulties attributed to House Bill 471.

Finally, I would like to express my appreciation to my colleagues, from both parties, in both the House and the Senate, for their efforts and patience in crafting a solution which is timely, responsible and fair. We do our best when we put aside ideological and partisan differences in order to serve the people of this state, and our work on House Bill 692 exemplifies that. Please join members of the Public and Municipal Affairs Committee in voting House Bill 692, as amended, ought to pass. Thank you.

(The Chair recognized Sen. Gatsas to speak.)

SENATOR GATSAS: Thank you, Madam President. I'd like to offer Amendment 2008-038. And may I speak to that.

PRESIDENT LARSEN: We are on the vote of the committee amendment first.

SENATOR GATSAS: Okay.

PRESIDENT LARSEN: There will be an opportunity for amending that subsequently. The first order of business is the committee amendment. Is there any discussion on the committee amendment? Seeing none, the question is on the adoption of the committee amendment, are you ready for the question?

**The question is on the adoption of Committee Amendment 0009s.
A division vote was requested.**

A roll call was requested.

PRESIDENT LARSEN: A division has been requested. A roll call has been requested, and there is a question.

PARLIAMENTARY INQUIRY

SENATOR BRAGDON: Thank you, Madam President. I'm just confused about the parliamentary process. If it's on the floor and open for discussion and amendment, why isn't an amendment allowed to be brought forward at that time? Am I – is this something new and different or is this ...

PRESIDENT LARSEN: We bring the committee amendment and its recommendation to the floor first. It is then subject to further amendment.

SENATOR BRAGDON: Oh, once it's brought to the floor?

PRESIDENT LARSEN: Yes.

SENATOR BRAGDON: Okay.

PRESIDENT LARSEN: What is before us is the adoption of the committee amendment. A roll call was requested, and a division was requested. The roll call takes precedence. You withdraw your division request and allow a roll call to occur, Sen. Hassan.

SENATOR HASSAN: Yes, Madam President.

**The question is on the adoption of Committee Amendment 0009s.
A roll call was requested by Sen. Kenney, seconded by Sen. Barnes.**

The following Senators voted Yes: Gallus, Reynolds, Kenney, Sgambati, Cilley, Janeway, Odell, Roberge, Kelly, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, DeVries, Letourneau, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.

The following Senators voted No: None.

Yeas: 23 - Nays: 0

Committee Amendment 0009s adopted.

Sen. Gatsas offered a floor amendment.

Sen. Gallus, Dist. 1

Sen. Kenney, Dist. 3

Sen. Odell, Dist. 8

Sen. Roberge, Dist. 9

Send. Bragdon, Dist. 11
 Sen. Clegg, Dist. 14
 Sen. Gatsas, Dist. 16
 Sen. Barnes, Dist. 17
 Sen. Letourneau, Dist. 19
 Sen. Downing, Dist. 22
 January 2, 2008
 2008-0038s
 01/04

Floor Amendment to HB 692

Amend the bill by replacing all after the enacting clause with the following:

1 Workers' Compensation; Exclusion. Amend RSA 281-A:18-a, I to read as follows:

I. Any corporation or limited liability company may elect to exclude up to 3 executive officers or members from the compulsive coverage requirements under this chapter[; ~~provided, that such exclusion shall not apply to any individual, regardless of status or title within a corporation or limited liability company, who is actively engaged in on-site work on any construction site within the state of New Hampshire~~].

2 Workers' Compensation; Policy Cancellation and Return of Premium.

I. Insurance coverage on up to 3 executive officers or members of a corporation or limited liability company purchased solely to meet the requirements of RSA 281-A:18-a, I, as amended by 2007, 323:1 and which became effective September 14, 2007, may be cancelled or removed at the request of the insured.

II. Insurers returning premium pursuant to the cancellation or removal of coverage under paragraph I shall calculate the return premium amount using, at a minimum, a pro-rata methodology. Such a methodology shall result in a return premium no less than an amount which fully reflects that unexpired portion of the full term policy premium for which no insurance coverage will be provided. Insurers shall not calculate the return premium amount using any methodology which "short-rates" or otherwise penalizes the insured.

III. As a condition of cancellation or removal of coverage, the insurer may require the insured to provide a "loss-free" letter, which indicates:

(a) The names of any person or persons being excluded from coverage.

(b) The date coverage is to cease.

(c) An attestation that any person or persons to be excluded are not aware of any injuries or other claims that have occurred during the term of coverage and which have not yet been reported to the insurer.

3 Repeal. The following are repealed:

I. RSA 228:4-b, relative to certification of current workers' compensation coverage required.

II. RSA 21-I:80, VI, relative to major projects.

III. RSA 281-A:4-b, relative to work certificate for contractors before beginning their work on public projects.

IV. RSA 6:12, I(b)(262), relative to the workers' compensation fraud fund established in RSA 281-A:4-b, IV.

V. 2007, 323:6 through 323:9 and 2007, 323:10, I, relative to a report and relative to prospective amendments to the workers' compensation fraud fund effective July 1, 2011.

4 Effective Date. This act shall take effect upon its passage.

2008-0038s**AMENDED ANALYSIS**

This bill repeals the provisions of HB 471-FN-A of the 2007 legislative session, an act relative to workers compensation compliance in the construction sector and continually appropriating a special fund (2007, 323).

The bill also authorizes certain insureds who purchased workers' compensation insurance coverage to comply with the requirements of 2007, 323:1 to request that insurers return a portion of the policy premium.

SENATOR GATSAS: Thank you, Madam President. I'm offering Amendment 2008-0038. There's no question that we just had a roll-call vote on an amendment that came to an agreement –

PRESIDENT LARSEN: Sen. Gatsas, I need to say that Floor Amendment 0038s has been proposed, and the discussion on the amendment. Sen. Gatsas.

SENATOR GATSAS: There's no question that there was just a 24-0 vote on an amendment that came out of a committee that was agreed to some three or four weeks ago. In the last week, however, there are still unintentional consequences, even to that amendment, for people that are doing work in the State of New Hampshire. Obviously, the people that do the plowing that were the unintentional consequences in this last session on the piece of legislation of 471, those same people, when spring comes, are going to be moving gravel and tar in the construction industry; and they being the only employees of their company, they will be exempt again, as an unintended consequence, and they're going to be affected. There's no question that there should be more discussion on the legislation to make sure that people that are independent contractors are independent contractors. And for those contractors that are forcing people to sign documentation to say that they're independents, there should be a punishment. There is no question. But the piece of legislation that we have, that we've just passed as amended, still has unintended consequences. So this amendment basically repeals all of 471, and leaves in the section for the cancellation and return of premium, because that is something that I believe the small employer should be entitled to. I think we have heard that insurance companies will work with us to make sure those people aren't hurt. The unintended consequences of 471 will affect the company that I have in Hooksett, which is a crane operating company. There are only four employees and they're all family members. There are going to be an unintended consequence when they start working on projects for the State, that they aren't going to be alleviated from workers' – that they will not have to pay workers' comp. They're still going to have to pay, even though they're three officers of that company. So I think it's important that we don't, again, inflict unintended consequences to affect people, that we have a session here that we can look at and understand, and find a resolve that makes sense to everybody. Thank you, Madam President.

(The Chair recognized Sen. Hassan to speak.)

SENATOR HASSAN: Thank you, Madam President. I would urge my colleagues to vote no on the floor amendment. I appreciate the concern that my colleague has expressed. But I do want to point out the following: That the original House Bill 471 was a result of a bipartisan study committee that included members from both the House and the Senate, and that the issue of whether construction workers working on public projects should be required to carry workers' comp. was fully vetted in

this Legislature, and that was, in fact, what much of the hearing testimony was about. That was not an unintended consequence. That was a conscientious agreement by both parties, in strong bipartisan votes, to support the notion that when people do dangerous construction work on public projects in this state, that they have workers' comp. coverage. Now, the amendment that we just passed, the committee amendment, makes an exception to that for routine maintenance work. And there is specific understanding with the Department of Transportation about what "routine maintenance work" includes. But certainly to suggest that the notion that people who were actually doing construction work on public projects would need to carry workers' comp. now, certainly the notion that that was unintended is not borne out by the Legislative history there. In addition, we have just seen what happens when – we passed 471, we didn't have much testimony, if any, on the first section of the bill, it slipped under the radar; we are now fixing that. We have worked very hard to come together to find the appropriate solution that can pass from here, quickly today to the House, and quickly to the Governor. I am concerned that if we throw a wrench in that today, not knowing entirely what the consequences of this proposed floor amendment are, that in fact, the speed and efficiency, with which we hope that this committee amendment will pass, may be jeopardized. And, in fact, we may be putting the very contractors we are trying to protect from unintended consequences at more risk if this floor amendment goes over to the House where we can't predict exactly what will happen to it. So it is my recommendation to this body that we vote against the floor amendment, understanding that there are bills in both the House and the Senate in the upcoming session that will come back to this very issue where we can have full hearings on the issue, where the very people that my colleague from Manchester just spoke about can come forward and testify, and, if needed, we can craft a very careful change to this law. But I would hate to do it now in the 11th hour on the floor, when many of us have just seen this amendment right now, for the first time, and jeopardize the greater issue which is remedying the unintended consequences of the first section of the bill.

(The Chair recognized Sen. Gatsas for a question of Sen. Hassan.)

SENATOR GATSAS: Senator, can you tell me, in the history of the State of New Hampshire, before this workers' comp. bill was in place, had there been any allegations or liabilities against the State of New Hampshire for injuries on the job, on any of those worksites that we're trying to protect?

SENATOR HASSAN: I can't answer that question, I wasn't part of the study committee that heard over, I believe, six months of testimony from various people in the construction industry for the State of New Hampshire on this very issue. And that bipartisan study committee is what recommended House Bill 471, and the second section of it, in particular.

SENATOR GATSAS: Thank you.

(The Chair recognized Sen. Kenney to speak.)

SENATOR KENNEY: Thank you, Madam President. I just rise in support of the Gallus amendment. And I understand that there are a lot of wrenches in the workmens' compensation engine. But I also understand that we passed something here this last session, House Bill 471, that in essence, unintentionally or not, changed the working culture of our state. And it's been this Legislature, at least for the last 14 years that

I've served here, is that when we make a mistake, we undo it. But we undo it from its entirety. We need to take every wrench of that engine out, because what we've done, in essence, when we passed House Bill 471, is we changed the working culture of this state. We changed it so much that we affected the young and the old, independent workers out there, before the holidays, when it came to their decisions on their livelihoods, whether they were going to stay in business or have to pay workmens' compensation under this new law. And we all know, we've all been called, we've all been, you know, approached by the effects of this bill. And I have to say that out of all the years that I've served here, this has been the biggest bill that has impacted small business in my district. And from the snowplower, to the carpenter, to the mason, to the guy who's the excavator, to the landscaper. And I just want to let them know that I share in this process of letting this go under the radar, and that I want to make sure that I stand up for them today and say let's go for a total repeal of what we did. And let's do it in a manner that says: Hey, we made a mistake, we're going to fix it, we're going to move ahead and move forward.

Because one of the things is that we're doing with this legislation, in my belief, is that we're changing the way we do business in New Hampshire. And I don't think, as the old expression was, if it ain't broke, don't try to fix it. And that's how I feel about House Bill 471, in that a total repeal is very much in line with what the people who work in small business have asked me to support, and many of the other associations and the other trade groups, who have said: Listen, we weren't at these hearings in full force, we didn't represent our own associations as well as we could have. I guarantee if there's a bill here on the repeal of House Bill 471, that I can bring 200 workers into the State Capitol who will support total repeal of House Bill 471. It's changed the way we've done business in New Hampshire. It's changed the way, you know, I look at the workmens' compensation issue. And I really think we need to go back to square one, because we really did cut the hearts out of these small business people, we really took the spirit of 'em before the holidays. And I think to rejuvenate that business population and community, by going ahead with the total full repeal of House Bill 471, and get back to square one, and then have these grandiose debates about what we should do about workmens' comp., the independent contractor, how we're going to treat this in the future, let's air it out, because we surely didn't air out House Bill 471. And let's do it this session. So that's why I'm in support of the Gallus Amendment. Thank you, Madam President.

(The Chair recognized Sen. Hassan for a question of Sen. Kenney.)

SENATOR HASSAN: Sen. Kenney, can you tell me what happens to a worker who gets injured on a job who doesn't have workers' comp. or health insurance, and who pays for the cost of their medical care?

SENATOR KENNEY: Thank you for that question. And that's a good question. I've talked to a lot of my workers, and most of them have health insurance, they have disability insurance. Particularly, the roofers, particularly, you know, landscapers, snowplowers, and that they're in small business to take a risk. It's their livelihood. In the Central Northern part of this state, there are people who work four and five jobs just to put food on their table. They're willing, as is part of that LLC, to be those top three people as executive officers, to take that risk. The mere fact that you're an entrepreneur, the mere fact that you're a small business owner, you're taking a risk. Every time you add overhead to that individual, in the Central Northern part of this State, they are not going to be able to survive

with paying four or five thousand dollars. In the case of someone who's a roofer, they pay what, \$54 on a hundred dollars? They're not going to afford to stay in business. They're going to go around the system. So let's not take away the spirit of entrepreneurship. When someone gets injured, and they're the person who's in the LLC, they want to work. They do not want to collect workmens' compensation, and they'll tell you that right to your face. And my sense is that they're willing to take the risk.

SENATOR HASSAN: Follow-up. Understanding that, Sen. Kenney, my question was: If they do get injured, and they don't have healthcare, and they don't have disability, who ends up paying for the cost of their care?

SENATOR KENNEY: If they don't have health insurance, if they don't have disability insurance, if they don't have other type of insurances, they're taking a risk and the responsibility falls back onto them and to society. But I will caution that most people that work as an employee for someone else, that employer has certain requirements for that employee for them to even work on the job site. So really, in my judgment, I'm talking about people that are landscapers, the "mom and pop" shops, who don't want to pay that workmens' compensation, who haven't, in the history of this state, and so they take the risk. And so, ultimately, everything does fall back to society.

SENATOR HASSAN: Thank you.

(The Chair recognized Sen. Clegg to speak.)

SENATOR CLEGG: Thank you, Madam President. I rise in support of the amendment. And while we talk about the summer study committee, I just want to point out there was a minority report. And I know that because I wrote it. So not everybody was in favor of what came out of that committee. In fact, some of us thought that it went just a little bit too far. And as far as having seen this amendment that we have before us now for the first time, I have to tell you right up through last night I had members of the House saying to me: Have you any idea what your amendment looks like on workers' comp., because we haven't seen it, so we don't know what you're sending over to us. So I guess no matter what we send over to them, whether it's this one or the one we just voted on, House members will be seeing it pretty much for the first time.

Now, I have some problems with what we just did, because I don't think it goes far enough. We all know that we had to put a suspension on this law because once the snowplow trucks, that were supposed to hit our highways, found out that they now needed to have workers' comp., they said to the State: Guess what? The price just went up. The State says: I don't have that much money. So we said to them as a State: Don't worry about it. Now, this isn't the first time we've done that. It's the second time. I remember when we passed something in this Legislature last year that said you have to cover children up to the age of 26 in the insurance. And I stood up and asked the question: Is the State going to follow that mandate like they're going to do to all the small businesses? And the answer was "Absolutely." Well, when the State again found out how much it was going to cost, they decided: Oh, we're self-insured. We're not going to follow the law. So here's the second law now that we're going to change just for the sake of the State, cause the State's the only one that does business with rental agreements. What about the guy that works for Continental Paving? They don't work with rental agreements with the State. Now, all of a sudden Continental Paving, who has bid on a number of road projects says: Well, all my independent truckers now have a fifteen or twenty thousand dollar bill, I've got to add that to my

bid. Does the State say no? Does the State now exempt everybody who works for Continental Paving because it's Continental Paving? I don't know how far this goes. All I know is somebody's got to come up with the money. And if it's for state jobs and we want everybody to have it, then is the State ready to increase the amount of the awards that they gave everyone based on how many independent people are going to be doing that work, or do we just say to independent truckers: Tough, you're out of business. Go to Massachusetts. Go someplace else, we don't want you. I don't think that's what we want to do in the State of New Hampshire. I saw an ad on TV, it's a political ad, and it says: "Let's not look at yesterday, let's look at tomorrow." Well, I don't agree with that ad, and I don't agree with what we're doing. Let's take a look at what we did yesterday, and let's not wait for tomorrow to fix it. Let's fix it today. Let's repeal it. You've got four bills in the hopper that you can argue with. So let's have a discussion on those four bills on exactly what the consequences are to every small business owner in the State of New Hampshire. Because once we have that discussion, we know what's right. Moving everything back to the way it was before we made the mistake is the easiest and the best way to approach this problem. Once we've gone back to the way it was, we can bring everybody in and say: How do I not put you out of business with a new state mandate? I ask my colleagues to vote for this amendment so that all the small business people, all the "mom and pops," and all the guys who are trying to put food on their table, and send their kids to college, don't suddenly end up out of business, and out of work. Thank you, Madam President.

Recess/Out of Recess.

(The Chair recognized Sen. Letourneau to speak.)

SENATOR LETOURNEAU: Thank you, Madam President. In my 12 years of being in this Legislature, this is the first time that I've seen a bill that's done so much damage to small business in this state as this one, with the results of it, the unintended consequences. I've been getting phone calls from Sheetrockers, from small independent businessmen with their own small companies, truckers, people who do sanding and plowing. I'm getting calls from all kinds of people. This particular bill has caused a lot of problems, very expensive problems, for little guys in this State. One guy told me he had a \$40,000 bill. And I was shocked. I don't know where he would get that kind of money. I agree with Sen. Clegg that the damage that this has done, we need to go back to square one and air this whole thing out through a whole hearing process, bring all these people in. They're all willing to come up here and speak on this and tell us exactly where the problems are. So that's what I'm doing, I'm getting up and I'm supporting this repeal, and hopefully my colleagues will agree with me, that we made a mistake and we can fix it, but we need to do it in an orderly fashion. Thank you.

Sen. Estabrook moved the question.

Without objection, the Chair moved to close debate, with two remaining speakers.

(The Chair recognized Sen. Gatsas for a question of Sen. Clegg.)

SENATOR GATSAS: Thank you, Madam President. Sen. Clegg? Sen. Clegg, from your testimony, you sat on that study committee, can you tell me in that study committee, did you have people coming in and complaining that they were doing work for the State of New Hampshire and they did not have workers' comp., and they got injured?

SENATOR CLEGG: No, that wasn't the complaint. The complaint during that study committee was more about on contractors from out of state, coming in and bidding on New Hampshire work. And instead of using New Hampshire rates, because we're tied in so close to Boston, they were using either Maine or Vermont rates, which gave them an unfair advantage. What they were really looking for is they were looking for the State of New Hampshire's Department of Labor to start going to these jobs, and when out-of-state contractors were here more than the three days allowed, actually forcing them to pay the same rates as New Hampshire contractors. The Department of Labor says it's too understaffed to do that. But what we've done here doesn't affect that. People will still come in, still cheat the system by not using New Hampshire rates.

SENATOR GATSAS: Follow-up? So really the testimony that we heard about what happens to people when they don't have workers' comp. and don't have health insurance, in this study committee that really wasn't the issue; it was the issue about out-of-state companies using lower workers' comp. rates having an undue advantage against New Hampshire companies.

SENATOR CLEGG: That's true. But there was some discussion about what happens to the guy who doesn't have workers' comp. and claims to be an independent. Again, the big problem we found there was when they went to the Department of Labor, if they wanted somebody else to pay their bills, all they had to do is say to the Department of Labor: Well, really I was his employee. And automatically the Department of Labor says: Okay, you're at fault. It becomes a real problem in that people who make conscious decisions to be employed by themselves aren't held accountable for those decisions once they get hurt because the Department of Labor's too willing to put the burden on business that does have coverage.

SENATOR GATSAS: Thank you.

(The Chair recognized Sen. D'Allesandro to speak.)

SENATOR D'ALLESANDRO: Thank you, Madam President. I rise to speak against the amendment. I was a member of the commission. The testimony that we heard at the time the commission was held, was given by Vice-Chancellor MacKay of the University System. And what Vice-Chancellor MacKay said to the commission was that there were contractors on State projects who did not carry workingmen's compensation. And as a result they would be able to bid a job cheaper and that would eliminate New Hampshire contractors maybe from getting opportunities to work. That was the genesis of the fact that for public projects everyone should have workingmen's compensation. Now, the amendment offered by Sen. Hassan rectifies a situation that did create an unintended consequence, but keeps in place what the real statement of the commission was, that on public projects everyone should have workingmen's compensation so that we have a level playing field in terms of the bids. That's really what the testimony indicated, that's what the commission decided upon. I think it was the right thing to do. The amendment, as I said, corrects the unintended consequences, and we move forward. And I've heard from people all over the state about the unintended consequences, as everyone here has, and the amendment offered by Sen. Hassan rectifies that situation and allows us to move forward. That's good policy. When you find something is done incorrectly, you make a change. This change is for the benefit of those involved, and I think it does the job. Thank you, Madam President.

(The Chair recognized Sen. Gottesman to speak.)

SENATOR GOTTESMAN: Thank you, Madam President. I will not repeat Sen. D'Allesandro's comments, but I adopt them, verbatim, because that is the key to what's going on here. I conducted this hearing as chairman of the committee that heard this legislation. And as I recall, the only people on this list of sponsors of this amendment who offered anything would have been Sen. Roberge and Sen. Barnes, who were on the committee and who would have heard the testimony, and who know full well that this bill was fully vetted, that it passed in committee, it passed unanimously here by voice-vote, in my recollection, and then unintended consequences were revealed. We *all* got the calls. We *all* got the complaints. We *all* want to fix the situation. We *all* want to do better for the citizens of the State of New Hampshire.

In light of Sen. Kenney's comment, his 200 people did not show up at the hearing. As a matter of fact, very few people showed up at the hearing. And when I challenged the people who criticized us after this bill passed, when the consequences were revealed, they all said: We missed it. They all said: We missed it. The insurance industry, the Labor Department, everybody missed it. Well, we missed it, too. We missed the boat and we made a mistake, and now we're all trying to rectify this mistake. But we want to keep the right intent of what the bill was originally for. And Sen. D'Allesandro has set that forth. And I believe that Sen. Hassan's legislation here today does correct the problem and keeps the heart of the legislation that we intended to do at the very beginning of this dispute. So, I ask you to vote against the amendment and live with the amendment that we just passed.

The one last thing that I will say is it's my understanding that this negotiation to get to Sen. Hassan's amendment was something that was very fragile. Everybody wanted something to go into this amendment, and there was a bipartisan agreement that occurred that resulted in that amendment. We are here today to work in a positive fashion, in a bipartisan way, to adopt something that helps people. I think that's what you do when you give your word, and you say you agree to something. And I thought that's what we were here to adopt today. Thank you, Madam President.

The question is on the adoption of Floor Amendment 0038s.

A roll call was requested by Sen. Gatsas, seconded by Sen. Barnes.

The following Senators voted Yes: Gallus, Kenney, Odell, Roberge, Bragdon, Clegg, Gatsas, Barnes, Letourneau, Downing.

The following Senators voted No: Reynolds, Sgambati, Cilley, Janeway, Kelly, Gottesman, Foster, Larsen, DeVries, D'Allesandro, Estabrook, Hassan, Fuller Clark.

Yeas: 10 - Nays: 13

Floor Amendment 0038s failed.

The question is on the adoption of Ought to Pass as Amended on HB 692.

A roll call was requested by Sen. Kenney, seconded by Sen. Barnes.

The following Senators voted Yes: Gallus, Reynolds, Kenney, Sgambati, Cilley, Janeway, Odell, Roberge, Kelly, Bragdon, Gottes-

man, Foster, Clegg, Larsen, Gatsas, Barnes, DeVries, Letourneau, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.
The following Senators voted No: None.

Yeas: 23 - Nays: 0

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SUSPENSION OF THE RULES

Sen. Foster moved that the Rules of the Senate be so far suspended so as to allow **HB 692** to be on Third Reading and final passage at the present time.

Motion adopted by the necessary 2/3 vote.

Third Reading and Final Passage

HB 692, allowing certain municipalities in economically depressed counties to adopt a property tax exemption for industrial construction.

HB 232, relative to retaliatory rent increases and mediation of manufactured housing park disputes. Commerce, Labor and Consumer Protection Committee. Inexpedient to Legislate, Vote 3-0. Senator Reynolds for the committee.

SENATOR REYNOLDS: Thank you, Madam President. I move that HB 232 is inexpedient to legislate. This bill prohibits rent increases based on judgments in manufactured housing park disputes. The bill also expands the type of relief available in manufactured housing disputes if the parties first seek to mediate the dispute. The committee felt, upon hearing extensive testimony, that there existed significant questions regarding the ability of this legislation to be effectively enforced, especially as it pertains to the identification and determination of retaliatory rent increases as opposed to those rent increases due to cost escalations and other financially motivated factors. Further, it is the determination of the Committee that there may exist problems with the establishment of neutrality within the structure of the mediation aspect of this legislation, and that there may already exist such a mechanism for those seeking a solution. With these considerations in mind, please join the Commerce, Labor and Consumer Protection Committee, in moving HB 232 inexpedient to legislate. Thank you.

(The Chair recognized Sen. Barnes to speak.)

SENATOR BARNES: Thank you, Madam President. Just a comment, that had I been at the committee hearing, the vote would've been 4-0.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on HB 232.

Motion of Inexpedient to Legislate adopted.

HB 254, relative to mandatory employer meetings about political and religious beliefs, including beliefs about joining a union. Commerce, Labor and Consumer Protection Committee. Inexpedient to Legislate, Vote 3-0. Senator DeVries for the committee.

SENATOR DEVRIES: Thank you, Madam President. I move that House Bill 254 is inexpedient to legislate. This bill prohibits employers from requiring employees to attend religious and political meetings. While the Committee certainly does not object to the core premise of this legislation and agrees that no employee should be subject to coercion or to

intimidation by their employer, it is unclear that the language presented has sufficiently addressed the intended issue without significantly infringing on the ability of New Hampshire's businesses, big and small, to effectively, and lawfully, communicate with their employees. Interfering with such communication would serve as a detriment to New Hampshire's economic climate and tarnish the pro-worker/pro-business balance that this body has worked so hard to maintain. In addition, the Committee raised questions pertaining to possible conflicts established in this legislation and the jurisdiction established and maintained by the National Labor Relations Board. It is not the intent of the Committee to enter into this realm of legislative territory without a clear determination that any language considered, or intentions rendered, are done so with firm constitutional grounding. It is important to note that this legislation remains committed to protecting workers' rights throughout the Granite State to the benefit of all of us: worker, businessman and consumer. However, at present, it is not clear that this legislation, although well-intended, effectively does that. Please join the Commerce, Labor and Consumer Protection Committee in moving HB 254 inexpedient to legislate. Thank you.

(The Chair recognized Sen. Barnes to speak.)

SENATOR BARNES: Thank you, Madam President. The same comment as on the first one; If I had've been there, the vote would have been 4-0.

(The Chair recognized Sen. Gottesman to speak.)

SENATOR GOTTESMAN: I would just like to address Sen. Barnes. I scheduled the hearings on some of these bills at a time that, unfortunately, was not one that was convenient for him. So my apologies to Sen. Barnes, and I believe Sen. Roberge as well. There was just no intention to keep them out of the loop. But their intentions, as Sen. Barnes has indicated, were well known to me, so we moved forward with the action on the bill.

(The Chair recognized Sen. Barnes to speak.)

SENATOR BARNES: Yes, Thank you, Madam President. Senator, you owe no apology. You did nothing wrong. So there's no apology needed.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on HB 254.

Motion of Inexpedient to Legislate adopted.

HB 281, relative to the cancellation of buying club memberships. Commerce, Labor and Consumer Protection Committee. Inexpedient to Legislate, Vote 3-0. Senator Gottesman for the committee.

SENATOR GOTTESMAN: Thank you, Madam President. I move that HB 281 is inexpedient to legislate. This bill eliminates the general provision permitting the pro rata cancellation of buying club memberships. The bill also limits pro rata refunds to situations where the club moves 20 miles farther away from the member's residence. Members of the Committee raised concerns with the legislation surrounding the negation of important consumer protection measures that are fundamental inclusions as they pertain to buying clubs of this nature. Further, the Committee, myself in particular, were troubled that the sponsoring company did not seek consultation from the Consumer Protection Bureau of the New Hampshire Attorney General's Office in the process of mov-

ing the language in this bill forward. Those considerations present, the Committee feels that this bill does not represent the best interests of New Hampshire consumers. Please join the members of the Commerce, Labor and Consumer Protection Committee in moving HB 281 inexpedient to legislate. Thank you.

(The Chair recognized Sen. Barnes to speak.)

SENATOR BARNES: Thank you, Madam President. The same comment. If I had've been there, it would have been 4-0.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on HB 281.

Motion of Inexpedient to Legislate adopted.

SB 248, relative to ethical standards for volunteers in the executive branch. Election Law and Internal Affairs Committee. Inexpedient to Legislate, Vote 3-0. Senator Cilley for the committee.

MOTION TO TABLE

Sen. Cilley moved to have SB 248 laid on the table.

Motion adopted.

LAIID ON THE TABLE

SB 248, relative to ethical standards for volunteers in the executive branch.

HB 367, relative to incompatible offices. Election Law and Internal Affairs Committee. Inexpedient to Legislate, Vote 3-0. Senator Cilley for the committee.

SENATOR CILLEY: Thank you, Madam President. I move that HB 367 – move it inexpedient to legislate. The bill clarifies the prohibition on nominations for incompatible offices, a situation which I am quite familiar. After deliberation, the Committee decided that points made in this bill would be better expressed in new legislation. That new legislation has been brought forward, and the Election Law and Internal Affairs Committee asks for your support in deeming this inexpedient to legislate.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on HB 367.

Motion of Inexpedient to Legislate adopted.

HB 715, establishing a committee to study the state heritage collections committee and the joint legislative historical committee. Election Law and Internal Affairs Committee. Inexpedient to Legislate, Vote 3-0. Senator Cilley for the committee.

SENATOR CILLEY: Thank you, Madam President. I move HB 715 inexpedient to legislate. This bill establishes a committee to study the possibility of combining the State Heritage Collections Committee and the Joint Legislative Historical Committee. The issue addressed by this bill has been resolved and so no further legislation is necessary. I ask that you join the Election Law and Internal Affairs Committee in ITL'ing this bill.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on HB 715.

Motion of Inexpedient to Legislate adopted.

Recess/Out of Recess.

HCR 6, urging Congress to prevent the implementation of the North American Free Trade Agreement superhighway system. Election Law and Internal Affairs Committee. Inexpedient to Legislate, Vote 4-0. Senator Letourneau for the committee.

SENATOR LETOURNEAU: Thank you, Madam President. I move HCR 6 inexpedient to legislate. The House Concurrent Resolution urges New Hampshire congressional delegation and the federal government to prevent implementation of the North American Free Trade Agreement Superhighway System. Currently, the federal action is being taken to address concerns that have been brought up in this resolution. Regarding questions over truck safety, there is a joint pilot program being conducted by several American and Mexican trucking companies exploring cross-border commerce. This program requires all trucks to be in compliance with U.S. laws and have a detailed safety audit, and it has the support of the American Trucking Association. The Election Law and Internal Affairs Committee requests your vote on ITL on this resolution. Thank you.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on HCR 6.

Motion of Inexpedient to Legislate adopted.

Senators Clegg and Kenney are in opposition to the motion of Inexpedient to Legislate on HCR 6.

HCR 8, urging Congress to rename the Veterans Administration Hospital the Styles Bridges Veterans Administration Hospital. Election Law and Internal Affairs Committee. Interim Study, Vote 4-0. Senator Cilley for the committee.

SENATOR CILLEY: Thank you, Madam President. I move that HR – HRC – HCR – I knew I was going to do that backwards – 8 be sent to – let me try this again. I move that HCR 8 be sent to interim study. This bill urges Congress to rename the Veterans Administration Hospital in Manchester, New Hampshire the “Styles Bridges Veterans Administration Hospital.” The Committee decided that more time is needed to discuss the naming proposal with veterans’ groups, and to consider the naming options, such as a Medal of Honor recipient from our State. The Committee also plans to hold a public meeting about this resolution in Manchester. The Election Law and Internal Affairs Committee asks your support to move HCR [sic] to interim study. Thank you.

(The Chair recognized Sen. Barnes to speak.)

SENATOR BARNES: Thank you, Madam President. I’m going to vote for that because I think it’s a good motion. There is a resident of our State of New Hampshire who is still going through the process, and I think we will have a Congressional Medal of Honor, New Hampshire person, probably in the next few months before summer’s over. So I think that’s good to hold it off so that gentleman, perhaps, is the gentleman who could have his name on that.

(The Chair recognized Sen. Kenney to speak.)

SENATOR KENNEY: Thank you, Madam President. As someone who represents a descendant of Styles Bridges in Wolfeboro, John Bridges, I think it’s quite appropriate, if the veteran community supports the naming of the Veterans Hospital in Manchester the Styles Bridges Veterans facility, primarily because he’s the Senator who got the appropriation for the VA Medical Center in the first place, and it was resurrected in, I

believe in 1948. And I would just ask Sen. Barnes and Sen. Hassan, who serve on the State Veterans Advisory Committee, if they could take this up as a matter of discussion at the next few meetings to see what the thoughts are. It's because that committee represents all the VSO's, the Veterans' Service Organizations, around the State of New Hampshire, and there are many other veteran leaders on that committee, to see what they think. But myself, personally, I think it's quite appropriate, given that we have named other buildings after federal elected officials who are nonmilitary, who have supported our projects around the State of New Hampshire. Thank you, Madam President.

(The Chair recognized Sen. D'Allesandro to speak.)

SENATOR D'ALLESANDRO: Thank you, Madam President. I think in naming a veterans' hospital after a political person, you know, that's one thing and we can vet it. But I can think of a young man from Manchester, New Hampshire, by the name of Renee Gagnon who suffered terribly as a result of World War II. He was one of those who raised the flag on Iwo Jima. He was brought back to this country – and I'm sure you've all seen the movie *"Flag of our Fathers,"* where that group of young men was really taken advantage of, and led very, very difficult lives. Very, very difficult lives. Now, I had Renee Gagnon's son as a student in my class at Bishop Bradley High School, I knew Mrs. Gagnon, and I know of the trials and tribulations that that man went through. And he died a very untimely and a very difficult death. But when we think about the veterans' hospitals, I think we should focus in on the service that our veterans aren't getting and the names of people who did serve, who served their country and served their country well, and who ended up on the very short end of the stick, and their lives were changed dramatically as a result of some things that happened to them. So when we're looking at these things, I think we should give them some thought. We should go back and look at the history of some of the brave men and women who did so much for this country in world conflicts, and Renee Gagnon is just one of them. But he's one that I had a personal association with and feel very, very strongly. And those of you who have not seen that movie, please, make it one of your things to do in 2008. Because what you see is what happened to six people who gave very, very generously of themselves for their country, and who ended up in very difficult circumstances. Thank you, Madam President.

(The Chair recognized Sen. Barnes to speak.)

SENATOR BARNES: Thank you, Madam President. Let the record show that on this first day of the Session, Sen. D'Allesandro and I agree on something. I think that's fantastic. And also, I'd like Sen. D'Allesandro and Sen. Kenney to know that Sen. Hassan and I certainly will bring this conversation to the board meeting which is on the 15th of January, and we will report back at our next session, and let this body know what that group thinks. Fair enough? Thank you.

The question is on the adoption of committee recommendation of Refer to Interim Study on HCR 8.

Motion of Refer to Interim Study adopted.

SB 174-FN-A-L, establishing the northern counties development authority and making an appropriation therefor. Energy, Environment and Economic Development Committee. Interim Study, Vote 6-0. Senator Hassan for the committee.

SENATOR HASSAN: Thank you, Madam President. I move that Senate Bill 174-FN-A-Local be sent to interim study. This bill would establish the Northern Counties Development Authority and makes an appropriation for the purposes of the bill. Currently, the United States Congress and New Hampshire's Executive Branch are each looking at ways to address this issue, putting into question the need for this particular legislation. The Committee decided that moving this bill to interim study will allow them to have an extra option while observing the developments at the state and federal level. The Energy, Environment and Economic Development Committee requests your support for the interim study motion. Thank you.

The question is on the committee recommendation of Refer to Interim Study on SB 174-FN-A-L.

Motion of Refer to Interim Study adopted.

SB 177, relative to orders of reparation by the public utilities commission. Energy, Environment and Economic Development Committee. Ought to Pass with Amendment, Vote 6-0. Senator Cilley for the committee.

Sen. Reynolds, Dist. 2

Sen. Cilley, Dist. 6

October 12, 2007

2007-2499s

06/09

Amendment to SB 177

Amend the title of the bill by replacing it with the following:

AN ACT relative to orders of reparation by the public utilities commission and penalties against public utilities.

Amend the bill by replacing all after the enacting clause with the following:

1 Reparations. Amend RSA 365:29 to read as follows:

365:29 Orders for Reparation. ~~[Whenever]~~ ***On its own initiative or whenever a petition or*** complaint has been ~~[made to]~~ ***filed with*** the commission covering any rate, fare, charge, or price demanded and collected by any public utility, and the commission has found, after hearing and investigation, that an illegal or unjustly discriminatory rate, fare, charge, or price has been collected for any service, the commission may order the public utility which has collected the same to make due reparation to the person who has paid the same, with interest from the date of the payment. Such order for reparation shall cover only payments made within 2 years before the date of ***the commission's notice of hearing or the filing of*** the petition for reparation.

2 Penalty Against Utility. Amend RSA 365:41 to read as follows:

365:41 Penalty Against Utility. Any public utility which shall violate any provisions of this title, or fails, omits or neglects to obey, observe or comply with any order, direction or requirement of the commission, shall be subject to a civil penalty, as determined by the commission, not to exceed ~~[\$25,000]~~ ***\$250,000 or 2.5 percent of the annual gross revenue that the utility received from sales in the state, which ever is lower. Such penalties shall be applied to the benefit of the utility's ratepayers, or otherwise in the public interest, as determined by the commission.*** No portion of any fine, nor any costs associated with an administrative or court proceeding which results in a fine pursuant to this section, shall be considered by the commission in fixing any temporary, permanent, or emergency rates or charges of such utility.

3 Penalty Against Agent. Amend RSA 365:42 to read as follows:

365:42 Penalty Against Agent. Every officer and agent of any such public utility who shall wilfully violate, or who procures, aids, or abets any violation of this title, or who wilfully fails to obey, observe, and comply with any order of the commission, or procures, aids or abets any such public utility in its failure to obey, observe, and comply with any such order or provision, shall be subject to a civil penalty, as determined by the commission, not to exceed ~~[\$10,000]~~ **\$100,000** for each violation, ~~[or for each day of a continuing violation]~~. ***Such penalties shall be distributed to the benefit of the utility's ratepayers, or otherwise in the public interest, as determined by the commission.***

4 Effective Date. This act shall take effect 60 days after its passage.

2007-2499s

AMENDED ANALYSIS

This bill requires penalties against public utilities or their agents to be distributed in the public interest.

MOTION TO TABLE

Sen. Cilley moved to have SB 177 laid on the table.

Motion adopted.

Sen. Foster asserted Rule 42 on SB 177.

LAI D ON THE TABLE

SB 177, relative to orders of reparation by the public utilities commission.

SB 196, establishing the position of director of climate change in the office of energy and planning. Energy, Environment and Economic Development Committee. Inexpedient to Legislate, Vote 6-0. Senator Fuller Clark for the committee.

SENATOR FULLER CLARK: Thank you very much, Madam President. I move Senate Bill 196 inexpedient to legislate. This bill would have established the position of director of climate change in the Office of Energy and Planning. Several agencies are already offering and addressing issues concerning climate change. And, additionally, efforts are underway to further this issue through the Governor – Governor Lynch's creation of a Climate Change Task Force. The creation of a web portal to better coordinate the work done by different agencies and organizations is also being considered. So while this legislation is not needed presently, its existence has helped continue the dialogue on this important issue. The Energy, Environment and Economic Development Committee asks your support of the motion of inexpedient to legislate. Thank you.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on SB 196.

Motion of Inexpedient to Legislate adopted.

HB 392, relative to the use of property held by the state of New Hampshire under an easement specifying low impact recreational use only. Energy, Environment and Economic Development Committee. Interim Study, Vote 6-0. Senator Cilley for the committee.

SENATOR CILLEY: Madam President, thank you. I move that HB 392 be sent to interim study. The bill prohibits the use of certain motorized vehicles on property held by the State of New Hampshire under an ease-

ment specifying low-impact use only, except by the landowner or easement holder for emergency or management purposes. While the Committee appreciates the intent behind this bill, there is clearly no – there is no clear definition of “low impact” in statute. Additionally, the imposition of certain conditions or definitions may actually have the unintended consequence of the Department of Resources and Economic Development being unable to accept land with restricted easements. Consequently, moving this legislation to interim study would give the Committee and the Department of Resources and Economic Development more time to determine options to solve this complex issue. The Energy, Environment and Economic Development Committee requests your support in moving this bill to interim study. Thank you.

The question is on the adoption of committee recommendation of Refer to Interim Study on HB 392.

Motion of Refer to Interim Study adopted.

SB 142, relative to the regulation of real estate brokers and salespersons by the real estate commission. Executive Departments and Administration Committee. Ought to Pass with Amendment, Vote 5-0. Senator Cilley for the committee.

**Senate Executive Departments and Administration
October 29, 2007
2007-2579s
10/04**

Amendment to SB 142

Amend the bill by replacing all after the enacting clause with the following:

1 Real Estate Practice Act; Criminal Records Check. Amend RSA 331-A:10-a, I to read as follows:

I. All applicants for a new salesperson or broker license shall submit to the New Hampshire department of safety, division of state police, a notarized criminal record release authorization form, along with the appropriate fee, prior to submitting an application for a real estate license. ***In addition, the applicant shall submit to the commission a criminal record report from any other jurisdiction in which the applicant has been convicted of a misdemeanor or felony offense.***

2 Qualifications for Licensure. Amend RSA 331-A:10, II(c)(1) to read as follows:

(c)(1) Has been employed full time by an active principal broker for at least one year [~~in this state~~] within 5 years of the date of application; or

3 Supervision; Branch Offices. Amend RSA 331-A:16, I to read as follows:

I. Every real estate office or real estate branch office, whether operated as a corporation, partnership or sole proprietorship, shall be directed, supervised and managed by a licensed real estate broker. The principal broker shall submit to the commission a branch office [~~registration~~] ***application*** form prior to the opening of any branch office. The principal broker shall designate a managing broker for each branch office the principal broker opens. The principal broker shall notify the commission when any licensee associated with the principal broker transfers from one branch office to another branch office within the same association.

4 Supervision of Real Estate Offices; Branch Offices. Amend RSA 331-A:16, IV to read as follows:

IV.(a) All advertisements by [~~an associate~~] **a** broker or salesperson shall include the [~~associate~~] broker's or salesperson's legal name or reasonable derivative thereof and the regular business name of the firm or the principal broker's name when licensed under an individual principal broker license. The firm or principal broker's name, within the advertisement, shall be clearly identifiable. This requirement shall apply to all categories of advertising including all publications, radio or television broadcasts, all electronic media including electronic mail and the Internet, business stationery, business and legal forms and documents, and signs and billboards.

(b) Any advertising which contains a home telephone number, cell-phone number, beeper or pager number, home fax number, or electronic mail address of an individual salesperson or [~~associate~~] broker, or a team of such licensees, shall also include the name and telephone number of the [~~employing~~] **individual principal** broker or brokerage firm through which the advertising licensees operate. All such advertising shall contain language **clearly** identifying each number included in the advertising.

5 License Amendments; Trade Name. Amend RSA 331-A:17, II to read as follows:

II. A real estate principal broker who proposes to use a registered trade name in connection with a [~~business principal~~] **firm** broker license or [~~the~~] individual principal broker license shall state that fact on an amendment form, and submit the form along with the appropriate fee, the [~~business~~] **firm broker license** or individual principal broker license to be amended, and a trade name registration form. The [~~business~~] **firm broker license** or individual principal broker license shall be amended to include the trade name.

6 License Amendments; Terminations. Amend RSA 331-A:17, IV to read as follows:

IV. The license of a real estate salesperson or associate broker shall be retained at all times by the principal broker and whenever a licensed salesperson or associate broker changes his or her affiliation from one licensed principal broker to another or ceases to represent the principal broker, the principal broker shall notify the commission in writing of the termination. Such notice shall be accompanied by the salesperson's or associate broker's license. Failure of any principal broker to notify the commission of such salesperson's or associate broker's termination within [~~10~~] **5** days after the termination of the salesperson or associate broker shall be grounds to discipline the principal broker.

7 Denial of Reciprocity. Amend RSA 331-A:23 to read as follows:

331-A:23 Denial of Reciprocity. No [~~nonresident~~] **broker or salesperson applicant** whose license as a broker or salesperson is under revocation or suspension in another state shall be granted a license as a broker or salesperson in this state; and, if already granted a [~~nonresident~~] license **through reciprocity**, it may be revoked or suspended as provided under this chapter upon proof of the other state's action.

8 Rulemaking; Continuing Education. Amend RSA 331-A:25, IX to read as follows:

IX. A minimum of a 3-hour core course of continuing education for active and inactive license renewal, and an additional [~~6~~] **9** elective hours of continuing education for active license renewals.

9 Prohibited Conduct. Amend RSA 331-A:26, I to read as follows:

I. Obtaining **or attempting to obtain** a license by means of fraud, misrepresentation, or concealment.

10 Prohibited Conduct. Amend RSA 331-A:26, X to read as follows:

X. ~~[Advertising in any manner without stating the broker's legal name as licensed or reasonable derivative thereof, and]~~ In the case of a salesperson or ~~[associate]~~ broker, ***advertising in any manner*** without stating the name of the ***individual*** principal broker ***when licensed under an individual principal broker license*** or business name as licensed for whom or under whom the salesperson or ~~[associate]~~ broker operates.

11 Effective Date. This act shall take effect 60 days after its passage.

SENATOR CILLEY: Thank you, Madam President. I move that SB 142 ought to pass with amendment. This bill was intended to clean up relatively small technical changes, the section of the law dealing with, you know, with real-estate practice. A particular note in the amendment is the inclusion that the applicant shall submit a criminal record check to the commission for, you know, for determination of eligibility to carry a license. Denial of reciprocity was also an issue that was brought up, and that it was found that if the license holder had had a revocation or a suspension in another state, that his or her license could be retroactively suspended, under our state laws. So these are primarily, as I said, small technical changes with the exception of those couple of things. So if you would please join the Executive Departments and Administration in passing this with amendment. Thank you.

(The Chair recognized Sen. Barnes for inquiry of Sen. Cilley.)

SENATOR BARNES: Thank you, Madam President. Sen. Cilley?

SENATOR CILLEY: Yes.

SENATOR BARNES: Do other commissions have this same check, to check, criminal checks, or just real-estate agents? What about people in the banking business and other businesses?

SENATOR CILLEY: Well, I know other professions and boards have criminal checks, such as the medical board for doctors. I believe that we passed one for nurses last time, if I remember correctly. So I'm not sure what the entire answer is to that.

SENATOR BARNES: Well, the follow-up was I just want to make sure that, you know, we don't have three or four, five more bills coming in that, to put this – it sounds like a great idea to me.

SENATOR CILLEY: The Board of Realty asked for it.

SENATOR BARNES: Yeah, okay. Thank you, very much.

The question is on the adoption or Committee Amendment 2579s. Committee Amendment 2579s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 142.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 156, relative to public health regions and regional public health councils. Health and Human Services Committee. Inexpedient to Legislate, Vote 4-1. Senator Fuller Clark for the committee.

SENATOR FULLER CLARK: Thank you very much, Madam President. I move Senate Bill 156 inexpedient to legislate. This legislation was filed at the request of the Department of Health and Human Services. The legislation sought to establish regional health districts on a voluntary

basis. It was re-referred to committee in order to further look at the issues involved. The Committee, upon further consideration, was concerned that the proposals under this legislation were not well coordinated with already existing efforts. And because of the vital importance of local control over these health councils which are already working well, the Health and Human Services Committee, asks that the bill be found inexpedient to legislate and requests your support. Thank you, Madam President.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on SB 156.

Motion of Inexpedient to Legislate adopted.

Sen. Kenney is in opposition to the motion of Inexpedient to Legislate on SB 156.

HB 867-FN-L, relative to parent liability for court-ordered services in juvenile proceedings. Health and Human Services Committee. Inexpedient to Legislate, Vote 5-0. Senator Kenney for the committee.

SENATOR KENNEY: Thank you, Madam President. I move House Bill 867 to be inexpedient to legislate. House Bill 867 is an act relative to parent liability for court-ordered services in juvenile cases. The Health and Human Service Committee feels that House Bill 867 is not ready for prime time. The issue of stepparent and their financial responsibility was not made clear in this legislation, and the Committee asks for your support of ITL on House Bill 867. Thank you, Madam President.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on HB 867-FN-A.

Motion of Inexpedient to Legislate adopted.

Sen. Letourneau is in opposition to the motion of Inexpedient to Legislate on HB 867-FN-L.

SB 48, relative to removal of appointed highway agents from office. Public and Municipal Affairs Committee. Ought to Pass, Vote 5-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Madam President. I move Senate Bill 48 ought to pass. This bill limits the removal of highway agents for cause to those highways agents who have been appointed by a town. This bill was introduced in response to recent upheaval in Epsom after an elected road agent was fired by the town's board of selectmen. The Committee believes that elected officials should only be fired by the voters and not by other elected officials. Last Session, the Committee moved to re-refer so as to not interfere with then ongoing legal action. However, since we last met, the court has spoken, and the Committee now feels it is appropriate to pass this legislation which it believes will prevent future controversy of this nature. Please join the Public and Municipal Affairs Committee in voting ought to pass on Senate Bill 48, and I thank you.

The question is on the adoption of committee recommendation of Ought to Pass on SB 48.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 49, relative to the authority of highway agents. Public and Municipal Affairs Committee. Interim Study, Vote 5-1. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Madam President. I move to send Senate Bill 49 to interim study. This bill makes a distinction between the

authority of elected and appointed road agents. Like Senate Bill 48, this bill was introduced to address a situation in the Town of Epsom, but the Committee feels that some language in the bill remains problematic. The Public and Municipal Affairs Committee requests that you support our motion of interim study on Senate Bill 49, and I thank you.

The question is on the adoption of committee recommendation of Refer to Interim Study on SB 49.

Motion of Refer to Interim Study adopted.

SB 190, establishing a committee to study municipal regulation of private motor sports clubs. Public and Municipal Affairs Committee. Inexpedient to Legislate, Vote 6-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Madam President. I move that Senate Bill 190 is inexpedient to legislate. This bill would establish a committee to study municipal regulation of private sport clubs. This legislation was filed in response to the situation in Tamworth involving the construction of a private motor sport club. As you all probably recall, this has been a very contentious issue during the past few years. The Committee believes that the Legislature has spent more than enough time studying and debating this issue. Please join the Public and Municipal Affairs Committee in voting inexpedient to legislate on Senate Bill 190, and I thank you.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on SB 190.

Motion of Inexpedient to Legislate adopted.

Sen. Kenney is in opposition to the motion of Inexpedient to Legislate on SB 190.

Sen. Foster asserted Rule 42 on SB 190.

HB 63, relative to conflicts of interest involving county officers and employees. Public and Municipal Affairs Committee. Inexpedient to Legislate, Vote 5-0. Senator Hassan for the committee.

SENATOR HASSAN: Thank you, Madam President. I move that House Bill 63 is inexpedient to legislate. This bill requires county officers, employees, and their agents to avoid conflicts of interest. The Committee certainly supports strengthening ethical standards for all elected officials. However, the Committee believes that counties already have the authority to address such issues themselves. Please join the Public and Municipal Affairs Committee in voting House Bill 63 inexpedient to legislate. Thank you.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on HB 63.

Motion of Inexpedient to Legislate adopted.

HB 115, relative to the procedure for counties to apply for, accept, and expend federal, state, or other grants. Public and Municipal Affairs Committee. Inexpedient to Legislate, Vote 6-0. Senator Hassan for the committee.

SENATOR HASSAN: Thank you, Madam President. I move that House Bill 115 is inexpedient to legislate. This bill requires certain approvals before a county may apply for, accept, or expend a federal, state, or other grant. The Committee believes that county officials already have the au-

thority which this legislation seeks to provide. Please join members of the Public and Municipal Affairs Committee in voting House Bill 115 inexpedient to legislate. Thank you.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on HB 115.

Motion of Inexpedient to Legislate adopted.

HB 456, limiting liability for town health officers and overseers of public welfare when acting in the course of their official duties. Public and Municipal Affairs Committee. Ought to Pass with Amendment, Vote 6-0. Senator DeVries for the committee.

Public and Municipal Affairs

October 15, 2007

2007-2495s

08/09

Amendment to HB 456

Amend the title of the bill by replacing it with the following:

AN ACT limiting liability for municipal health officers when acting in the course of their official duties.

Amend the bill by replacing all after the enacting clause with the following:

1 Health Officers and Overseers of Public Welfare; Liability. Amend RSA 31:104 to read as follows:

31:104 Liability of Municipal Executives. Notwithstanding any provisions of law to the contrary, no member of the governing board of any municipal corporation or political subdivision[;], no member of any other board, commission, or bureau of any municipal corporation or political subdivision created or existing pursuant to a statute or charter, and no chief executive officer of such municipal corporation or political subdivision, including but not limited to city councilors and aldermen, selectmen, county convention members, members of boards of adjustment, members of planning boards, school board members, mayors, city managers, town managers, county commissioners, regional planning commissioners, **municipal health officers**, and school superintendents shall be held liable for civil damages for any vote, resolution, or decision made by said person acting in his **or her** official capacity in good faith and within the scope of his **or her** authority.

2 Effective Date. This act shall take effect July 1, 2008.

2007-2495s

AMENDED ANALYSIS

This bill limits liability for municipal health officers when acting in the course of their official duties.

MOTION TO TABLE

Sen. DeVries moved to have HB 456 laid on the table.

Motion adopted.

LAIID ON THE TABLE

HB 456, limiting liability for town health officers and overseers of public welfare when acting in the course of their official duties.

SB 103-FN-L, relative to the limited betterment assessments on Class VI and private roads. Transportation and Interstate Cooperation Committee. Ought to Pass with Amendment, Vote 4-0. Senator DeVries for the committee.

Sen. Cilley, Dist. 6
November 19, 2007
2007-2666s
06/09

Amendment to SB 103-FN-LOCAL

Amend the title of the bill by replacing it with the following:

AN ACT establishing a committee to generate and evaluate solutions for maintaining emergency access on class VI and private roads.

Amend the bill by replacing all after the enacting clause with the following:

1 Committee Established. There is established a committee to generate and evaluate solutions for maintaining emergency access on class VI and private roads.

2 Membership and Compensation.

I. The members of the committee shall be as follows:

(a) Three members of the senate, appointed by the president of the senate.

(b) Three members of the house of representatives, appointed by the speaker of the house of representatives.

II. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

3 Duties. The committee shall generate and evaluate solutions for maintaining emergency access on class VI and private roads to ensure the safety of citizens without incurring additional costs.

4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named senate member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Four members of the committee shall constitute a quorum.

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2008.

6 Effective Date. This act shall take effect upon its passage.

2007-2666s

AMENDED ANALYSIS

This bill establishes a committee to generate and evaluate solutions for maintaining access on class VI and private roads.

SENATOR DEVRIES: Thank you, Madam President. I move Senate Bill 103 ought to pass as amended. As amended, the bill will establish a committee to generate and evaluate solutions for maintaining emergency access onto Class VI highways and roads. The members of the Transportation and Interstate Cooperation Committee requests your support in voting Senate Bill 103 ought to pass as amended. Thank you.

The question is on the adoption of Committee Amendment 2666s.
Committee Amendment 2666s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 103-FN-L.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 211-FN-A, establishing a veterans' programs number plate trust fund and a special veterans' programs license plate, to support state veterans' programs. Transportation and Interstate Cooperation Committee. Interim Study, Vote 5-0. Senator DeVries for the committee.

SENATOR DEVRIES: Thank you again, Madam President. I move that Senate Bill 211 be sent to interim study. This bill establishes a veterans' program number plate trust fund, which is funded by fees for a veterans' programs license plate established by this bill. Monies from the fund are to be used solely for appropriations to the Veterans Home, the State Veterans Cemetery, the State Veterans Council, and other state programs for veterans. The committee believes that this is an important piece of legislation, and respectfully requests additional time to further review and study the matter. Please join the members of the Transportation and Interstate Cooperation Committee in voting interim study on Senate Bill 211. Thank you.

(The Chair recognized Sen. Barnes for a question of Sen. DeVries.)

SENATOR BARNES: Thank you, Madam President. Sen. DeVries, you mentioned that, more time to study. What is the timetable for this committee of yours to study this and bring it back to this body?

SENATOR DEVRIES: If the bill is being referred to interim study, I believe that this was a prime-sponsored piece that was brought in by Sen. Kenney, and he will be forthcoming if he wishes the bill to continue.

SENATOR BARNES: So, I guess the answer to that is that this body might well see that bill before we leave here in June?

SENATOR DEVRIES: I do not believe so.

SENATOR BARNES: You don't believe so.

SENATOR DEVRIES: I do not believe so. I would refer to Sen. Letourneau if he believes otherwise.

SENATOR BARNES: Follow-up? This could come in as an amendment to a bill, couldn't it?

SENATOR DEVRIES: Amendments on other pieces of legislation are always allowed.

SENATOR BARNES: Thank you very much.

SENATOR DEVRIES: Thank you.

(The Chair recognized Sen. Kenney to speak.)

SENATOR KENNEY: Thank you, Madam President. Just to clear up some, maybe a little confusion, or if you need a little history on this. When we first passed the veterans' plate bill several years ago, it was a great thing for New Hampshire veterans and for the relatives and friends. Prior to that bill being passed into law, there was a concept that we would bring in a veterans' plate and have a trust fund so that anything above and beyond the cost of producing that plate would go into the state veteran departments such as the Veterans Cemetery, the Soldiers Home and the States Veterans Council. And there was a sense that the veterans' community wanted to know if they were paying more

than what it costs to produce the plate, or to purchase the plate, that they were supporting veterans' programs along with it. And so, those additional monies have been going to the Department of Safety. And so when we earlier on had this debate on the veterans' plate, there was a sense that there would be never enough veterans who would purchase enough plates. Well, as of today, I think there's something like 15,000 or more veterans' plates on the highways of New Hampshire. And at that time we were told that we would need 5,000 in order to come out revenue-neutral. So that's kind of the history on it. There is a sense that there are a lot of veterans in the State of New Hampshire who would like to see those additional monies go back to veterans through this trust fund. Thank you, Madam President.

(The Chair recognized Sen. Letourneau to speak.)

SENATOR LETOURNEAU: Just briefly. Thank you. As everybody in this room knows, I am a very strong supporter of veterans, veterans' programs and veterans in general. This particular bill has to do with the Highway Fund and it has some constitutional issues. We have just spent a summer studying what has happened to the Highway Fund and how we've taken money from that Highway Fund and divert it to all kinds of places. As a result, we've lost a billion and a half dollars' worth of highway construction in our state that many people in this room have worked for over the last several years to get on the highway list, on the 10-year Highway Plan. This is not a simple solution. Article 6-a of the Constitution requires that all monies that goes into the Highway Fund be spent on the highway projects. So diverting money from this particular fund to other places is a difficult one. And I just wanted to bring that to the attention of the colleagues in the room, because it's not that we're opposed to anything that the veterans are doing, and we're not opposed to veterans. Very strong supporter of veterans and veterans' issues. Thank you.

(The Chair recognized Sen. Kenney for a question of Sen. Letourneau.)

SENATOR KENNEY: Just a quick question, Sen. Letourneau. You mentioned about the constitutionality of monies going from a plate fund to, in this case, the veterans' departments. But you're aware that we have a Conservation Trust Fund Plate Program, and that we have a Moose Plate Program, and that those have not ever been challenged constitutionally, and they seem to be working fine. And the moose plate is supporting LCHIP, I believe, with \$300,000 a year. So I can't imagine that the veterans couldn't have a similar program.

SENATOR LETOURNEAU: Thank you, Sen. Kenney. And I don't disagree with you. I worked on that particular conservation license plate bill back in the late '90s and that was carefully crafted so that the money that was being used from that particular fund were being used on the highway, such as the flowers on the side of the highways and those sort of projects. It has got out of control, and that's part of the problem. Thank you.

The question is on the adoption of committee recommendation of Refer to Interim Study on SB 211-FN-A.

Motion of Refer to Interim Study adopted.

Senators Barnes and Kenney are in opposition to the motion of Refer to Interim Study on SB 211-FN-A.

RESOLUTION

Sen. Foster moved that the Senate now adjourn from the Early Session, that the business of the Late Session be in order at the present time, that all bills and resolutions ordered to Third Reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

Motion to adjourn adopted.

Adjournment from the Early Session.

LATE SESSION**Third Reading and Final Passage**

SB 48, relative to removal of appointed highway agents from office.

SB 103-FN-L, establishing a committee to generate and evaluate solutions for maintaining emergency access on class VI and private roads.

SB 142, relative to the regulation of real estate brokers and salespersons by the real estate commission.

ANNOUNCEMENTS**RESOLUTION**

Sen. Foster moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, referring bills to committee, scheduling hearings, sending and receiving messages, processing enrolled bill reports and amendments.

Motion to recess adopted.

The Senate is in recess to the Call of the Chair.

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2007 SENATE SESSION LAID ON THE TABLE**HOUSE AND SENATE BILLS**

The following legislation, which remained on the table at the time of adjournment of the 2007 session, had no further action taken.

CACR 19, relating to funding of public education. Providing that the legislature shall define standards for education, determine the level of state funding thereof, establish standards of accountability, and allocate state funds in a manner that mitigates disparities in educational opportunity and fiscal capacity, provided that every school district receives a reasonable share of the state funds on a per pupil basis.

SB 89, authorizing the Holden School of Nursing to confer degrees.

SB 96, extending the veterans' property tax credit to all honorably discharged veterans.

SB 110, relative to the ban on the sale and use of lead fishing jigs.

SB 112, relative to recommendations of marital masters.

SB 120, establishing a commission to study the removal of thimerosal from vaccines.

SB 151, relative to drug nuisance abatement.

SB 181-FN-A-L, adding a fee to motor vehicle fines for use by municipalities.

SB 203, relative to the use of the English language in writs and other court documents.

SB 218, relative to notice of sale requirements for manufactured housing parks.

SB 225-FN-A-L, relative to allowing video gaming in Coos county, building casinos in Berlin and Portsmouth, and establishing a fund to assist with the payment of property taxes.

SB 227-FN, authorizing land and community heritage investment program donations accompanying motor vehicle registrations.

SB 249-FN, establishing a new position and relative to the realignment of functions in the department of corrections.

SCR 1, declaring a state of emergency in the town of Dorchester during the March 2006 floods.

HB 51, permitting adoption by 2 unmarried adults in a familial relationship.

HB 88, establishing a committee to study single payer health care.

HB 146, relative to nicknames on ballots.

HB 203, relative to protections for temporary workers.

HB 239-FN-A, appropriating funds to the barn preservation fund matching grants program.

HB 244, repealing a certain provision of law regarding advance directives and mentally incompetent or developmentally disabled persons.

HB 263-FN, relative to health insurance riders.

HB 504-FN, relative to registration requirements for certain criminal offenders under age 21.

HB 513, establishing a housing commission.

HB 523, relative to lobbyist registration and statements, and regulation of volunteer public service.

HB 638-FN, relative to lease agreements entered into by the department of transportation.

HB 749, changing the position of forensic toxicologist within the department of safety from an unclassified to a classified position.

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RULES OF THE SENATE

2007 – 2008

Amended Senate Rule 48 – 12/06/06

Amended Senate Rule 10, 26, 48 (i-c) – 02/08/07

Amended Senate Rule 48 (h) – 06/07/07

Amended Senate Rule 48 (h) – 06/14/07

Amended Senate Rule 48 (i-l) – 06/27/07

Amended Senate Rule 18 (b) – 01/02/08

Amended Senate Rule 29 – 01/02/08

Amended Senate Rule 48 – 01/02/08

1. Determination of quorum; correction of Journal.
2. Members, decorum of.
3. Members, conduct when speaking.

4. Members not to speak more than twice.
5. President shall recognize whom.
6. Questions of order, appeal.
7. Member, absenting himself.
8. Motions, order of preference.
9. Questions postponed indefinitely not acted upon in same biennium.
10. Questions, when divided.
11. Objections to reading paper, how determined.
12. Roll Call, everyone must vote.
13. Galleries, clearing of.
14. Reconsideration.
15. Petitions, introduction of.
16. Bills; shall be numbered and expressed clearly.
17. Bills, introduction of.
18. Bills, drafting of.
19. Committees of Conference.
20. Resolutions to be treated as bills.
21. Bills shall have three readings; Progress of; time for second and third readings.
22. Bills, printing and distribution.
23. Bills amended only on second reading; filing of amendments.
24. Public hearings to be held and advertised.
25. Amended bills, printed distributed and disposed of.
26. Referral of Bills to Finance Committee.
27. President to sign bills, etc.
28. Committees, appointment of.
29. Standing Committees.
30. Messages sent to House.
31. Messages, when received.
32. Voting; division of Senate.
33. Visitors to Senate.
34. Hours of meeting.
35. Rules of Senate, how suspended.
36. Rules of Senate, how rescinded.
37. Committee of the whole.
38. President may name member to chair.
39. Senate staff; composition and duties.
40. Senate staff, days of employment.
41. Committees, reports and meetings.
42. Conflict of Interest.
43. Committee of Conference reports.
44. Personal privilege.
45. Appeal, presiding officer ruling.
46. Motions, no substitution under color of amendment.
47. Requisition Approval Required.
48. Deadlines
49. Requests to the Legislative Budget Assistant

RULES OF THE SENATE

2007 – 2008

1. The President, having taken the chair, shall determine a quorum to be present. Any erroneous entry in the daily journal shall be corrected no later than the third succeeding legislative day, and the permanent journal corrected within one week after the permanent journal copy is placed in the hands of the Senate.

2. No member shall hold conversation with another while a member is speaking in debate, or use electronic devices, including but not limited to personal computers, and telephonic devices, without leave of the Senate.
3. Every member, wishing to speak, shall notify the President. When the member is recognized to speak he shall rise and address the President, and when he has finished shall then sit down.
4. No member shall speak more than twice on the same question on the same day without leave of the Senate President.
5. More than one member wishing to speak at the same time, the President shall decide who shall speak first.
6. The President shall preserve decorum and order. If any member transgresses the rules of the Senate, the President shall, or any member may, call him to order in which case the member so called to order shall immediately cease and desist, and the Senate, if appealed to, shall decide the case. But if there is no appeal, the decision of the President shall be conclusive.
7. No member shall absent himself without permission from the Senate.
8. When any question is under debate, no motion shall be received but first, to adjourn; second, to lay upon the table; third, for the previous question; fourth, to postpone to a certain day; fifth, to commit; sixth, to amend; and seventh, to postpone indefinitely; which several motions shall have precedence in the order in which they are so arranged. Motions to adjourn, to lay upon the table, for the previous question, and to take from the table shall be decided without debate. Motions to postpone to a certain day shall be debatable both as to time and subject matter. No motion to postpone indefinitely, to postpone to a certain day, or to commit, being decided, shall be in order at the same stage of the bill or resolution, until after adjournment.
9. A question which is postponed indefinitely shall not be acted upon during the biennium except whenever two-thirds of the whole number of elected Senators shall on division taken, vote in favor thereof. Any bill which is indefinitely postponed shall not be reintroduced under cover of an amendment any bill, resolution, order, or committee of conference report. No motion to suspend this rule shall be permitted.
10. Any member may call for the division of the question when the sense will admit it. The question of whether two or more propositions are capable of division is to be determined by the Chair. Unless otherwise specifically provided for, each part of a divided question shall pass only upon majority vote of those members present and voting.
11. When the reading of a paper or document is objected to by a member, the question shall be determined by a vote of the Senate; and without debate.
12. When the nays and yeas have been moved by a member and duly seconded by another member each member present shall declare his assent or dissent to the question, unless for special reason he be excused by the Senate. The names of the persons so making the motion and the second shall be recorded in the Journal. The President shall determine the order of the roll call. No member shall be required to vote in any case where he was not present when the question was put.

13. In case of any disturbance or disorderly conduct in the gallery, the President shall have the power to order the same to be cleared. The Chairman of the Committee of the Whole may restrict attendance to the duly elected Senators.
14. No vote shall be reconsidered, unless the motion for reconsideration is made by a member who voted with the prevailing side. The notice of such motion for reconsideration shall be given to the Senate in open session prior to adjournment on the same day on which the vote was passed, or to the clerk within 2 working business days of the vote. Any such notice of reconsideration shall be effective for three legislative days only and thereafter shall be null and void. Reconsideration of any bills subject to a deadline established by Senate rules must be acted upon on or before the Senate rule deadline, and thereafter shall be null and void.
15. Before any petition shall be received and read, a brief statement of the contents thereof shall be made by the member introducing the same.
16. All petitions, memorials and other papers addressed to the Senate and all bills and resolutions to be introduced in the Senate, shall be endorsed with the name of the Senator presenting them, and with the subject matter of the same. Every bill shall be marked on the first page "Senate Bill" and numbered serially; every joint resolution shall be marked "Senate Joint Resolution" and numbered serially; every concurrent resolution proposing a constitutional amendment shall be marked "Concurrent Resolution Proposing a Constitutional Amendment" and numbered serially; and every other concurrent resolution shall be marked "Senate Concurrent Resolution" and numbered serially, as each bill or resolution is introduced into the Senate.
17. All petitions, memorials and other papers addressed to the Senate and all bills and resolutions to be introduced into the Senate shall be delivered or caused to be delivered to the Office of Legislative Services, which in turn will submit it to the sponsor for his signature, and then to the Clerk by Legislative Services. If requested by the sponsor, a proposed bill, resolution or petition shall not be made public, except by the sponsor, until signed by the sponsor. During any adjournment the President may receive bills and resolutions for printing and for reference to committee, provided that no bill shall have a public hearing until it is formally introduced into the Senate, printed and available for distribution.
18. Drafting of Bills
 - (a) If a drafting request for a bill or resolution has been filed with the office of Legislative Services requiring a fiscal note as provided in RSA 14:44-47, the substance or a draft of the proposal may be provided to the legislative budget assistant for preparation of the required fiscal note without the specific consent of the sponsor of the proposal, provided that the identity of the sponsor shall not be disclosed.
 - (b) Notwithstanding the provisions of 17, a Senate bill, Senate joint resolution, or Senate concurrent resolution may be accepted by Legislative Services for drafting and introduced into the Senate at any time prior to the deadline established by Senate Rules for the transfer of bills out of the first body if approved by either a majority of the Senate Rules Committee or a two-thirds vote on the floor.
 - (c) No bill the subject matter of which has been indefinitely postponed or made inexpedient to legislate in the Senate in the first-year

session shall be admitted into the second-year session whether as a bill, an amendment, a committee of conference report or in any other manner.

(d) Legislation returned from the non-originating body, with an amendment, shall not be re-referred to Committee but shall have one of the following recommendations: Concur, Nonconcur, Nonconcur and Request a Committee of Conference. Adoption of a motion to Nonconcur kills the legislation.

19. Committees of Conference.

(a) Whenever there be any disagreement between the Senate and the House on the content of any bill or resolution, and whenever both bodies, voting separately, have agreed to establish a committee of conference, the President of the Senate shall appoint three members to the Senate conference committee on the bill and the Speaker of the House shall appoint four members to the House conference committee. Exceptions: (1) the House committee of conference on the operating budget shall consist of five members; (2) the number of the members of the committees of conference on any bill may increase or decrease if the President and the Speaker both agree. The two committees of conference on a bill shall meet jointly but vote separately while in conference. A unanimous vote by both committees of conference shall be necessary for an agreed report to the Senate and the House by the committees of conference.

(b) The first-named person from the body where the bill or resolution in disagreement originated shall have the authority to call the time and place for the first meeting of the committees of conference on said bill.

(c) The first-named person on a committee of conference shall be the chairman of that conference. The chairman of the committee of conference of the body where the bill or resolution in disagreement originated shall chair the joint meeting of the committees of conference.

(d) No action shall be taken in either body on any committee of conference report earlier than some subsequent day, after the report has been delivered to the seats or placed on a member's desk. A committee of conference may neither change the title of any bill submitted to it nor add amendments which are not germane to the subject matter of the bill as originally submitted to it.

(e) Conference Committees on Budget Bills. The report of each committee of conference on either the general appropriation bill, or the capital improvements bill shall be printed in the journal or a supplement thereto of the appropriate body before action on said report is taken on the floor. Non-germane amendments, sections and footnotes to such bills (except footnotes in explanation of the principal text of such bills or designating the use or restriction of any funds or portions thereof) are prohibited and shall not be allowed under any circumstances. Notwithstanding the general provisions of paragraph

(h) of this section, the Conference Committee on general appropriations bill may propose new items for inclusion in said bill but no such item may be so included unless and until it shall have been returned to both the Senate and the House and adopted in identical form by a majority vote in each body.

(f) When both committees of conference on a concurrent resolution proposing an amendment to the constitution have agreed, the committee of conference from the body which acceded to a request for

committees of conference shall file its report with the clerk of that body who shall print it in full in the journal or supplement of that body. The report shall be made a special order of business at the late session of a subsequent day. After said report has been adopted by the first body, a message shall be transmitted to the second body which shall then act upon the report of its committee of conference.

(g) The sponsor of any bill or joint resolution referred to committees of conference shall, upon his request, be granted a hearing before said committees prior to action thereon.

(h) No member of a committee of conference shall sign any report that contains non-germane amendments or subject matter that has been indefinitely postponed in either body. For the purposes of this rule, a non-germane amendment would be any subject matter not contained in either the House or the Senate version of the bill.

20. All resolutions which may require the signature of the Governor shall be treated in the same manner as bills.
21. Every bill shall have three readings in the Senate previous to its passage. The first and second readings shall be by title only which may be accomplished by a conglomerate resolution, after which the bill shall be referred by the President to the appropriate committee and shall be printed as provided in Rule 22, unless otherwise ordered by the Senate. No bill after it has been read a second time shall have a third reading until after adjournment from the early session. The time assigned for the third reading of bills and resolutions shall be in the late session unless otherwise ordered by the Senate. The orders of the day for the reading of bills shall hold for every succeeding day until disposed of.
22. After every bill shall have been read a second time, and referred by the President to the appropriate committee, the Clerk shall procure a sufficient number of copies, printed on paper of uniform size, for the use of the legislature, and cause the same to be distributed to the members, and when printed the bill shall be immediately delivered to the committee to which it shall have been referred. Bills received from the House shall be printed at the same stage of their procedure unless they have been printed in the House and copies distributed in the Senate, in which case any amendment made by the House shall be duplicated and distributed in the Senate.
23. No amendment shall be made but upon the second reading of a bill; and all amendments to bills and resolutions shall be in writing, with the name of the Senator and the district he represents, or in the case of a committee amendment the name of the committee that recommended it, thereon. No amendment to any bill shall be proposed or allowed at any time or by any source, including a committee of conference, except it be germane. Amendments shall have been reviewed by the Office of Legislative Services for form, construction, statutory and chapter reference.
24. A hearing shall be held upon each bill referred to a committee, and notice of such hearing shall be advertised at least 4 days before hearing in the Senate Calendar. The Senate Calendar shall be available on the Internet for viewing as soon as it has been released for printing.

(a) All bills in the possession of committees shall be reported out with one of the following recommendations: ought to pass, ought to pass with amendment, rerefer to committee, inexpedient to legislate, or refer for interim study. Re-refer to committee shall be a committee report only in the first-year session. All rereferred bills

shall be acted on by the third legislative day of the second year session. Refer for interim study shall be a committee report only in the second year session.

(b) Any legislation creating a chapter study committee shall have membership limited to members of the General Court.

25. When a bill is reported favorably with an amendment, the report of the committee shall state the amendment, and then recite the section of the bill in full as amended. The amendment shall be printed in the senate calendar on the date that the report is listed for action. If no action is taken on that day, then the amendment shall be printed on the day to which the bill has been referred. All bills reported shall be retained by the clerk and shall not be finally acted upon until the following legislative day, and a list of such bills with the report of the committee thereon shall be published in the senate calendar for the day on which action shall be taken.
26. Referral of Bills to Finance Committee
 - (a). Every bill and joint resolution appropriating money, and every other bill which is accompanied by a fiscal note pursuant to RSA 14:44, which has been referred to another committee and favorably accepted by the Senate, shall be committed to the Finance Committee for review. All bills which are referred directly to the Finance Committee shall have a hearing.
 - (b). The Chair of a standing committee may request the Chair of the Finance Committee to exempt from review a bill that is subject to a fiscal note pursuant to RSA 14:44, but which the Chair of the Finance Committee believes has an undetermined or insignificant fiscal impact. The Chair of the Finance Committee shall announce on the floor all such bills exempted from review as soon as practicable after receipt of the request.
27. All warrants, subpoenas and other processes issued by order of the Senate shall be under the hand and seal of the President attested by the Clerk.
28. All committees of the Senate, including Senate members on committees of conference, shall consist of members of both parties as nearly equal as possible, provided that on all committees, both parties shall be represented. The President shall appoint the members of all committees, after consulting with the minority leader.
29. The standing committees of the Senate shall be as follows: the Committee on Capital Budget, the Committee on Commerce, Labor and Consumer Protection, the Committee on Education, the Committee on Election Law and Internal Affairs, the Committee on Energy, Environment and Economic Development, the Committee on Executive Departments and Administration, the Committee on Finance, the Committee on Health and Human Services, the Committee on Judiciary, the Committee on Public and Municipal Affairs, the Committee on Rules and Enrolled Bills, the Committee on Transportation and Interstate Cooperation, the Committee on Ways and Means and the Committee on Wildlife, Fish and Game and Agriculture.
30. Messages shall be sent to the House of Representatives by the Clerk of the Senate.
31. Messages from the Governor or House of Representatives may be received at all times, except when the Senate is engaged in putting the question, in calling the yeas and nays, or in counting the ballots.
32. All questions shall be put by the President, and each member of the Senate present shall signify his assent or dissent by voting yea or nay, or shall abstain from voting by reason of a conflict pursuant to

rule 42. If the President doubts, or a division is called for, the Senate shall divide. Those in the affirmative on the question shall first rise from their seats and stand until they be counted. The President shall rise and state the decision of the Senate.

33. No person except members of the Senate and its officers, the Governor, Council members, the Secretary of State, the Treasurer, the Speaker of the House of Representatives and its officers and clerks, shall be admitted to the floor of the Senate while the Senate is in session, except by the invitation of the President, or some member with the President's consent.
34. The Senate shall adjourn to meet on the subsequent legislative day for the early session at the time mentioned in the adjournment motion. The late session shall immediately follow the early session unless the Senate shall otherwise order.
35. No standing rule of the Senate shall be suspended unless two-thirds of the members present and voting vote in favor thereof. This rule shall not apply to Senate Rule 9.
36. No rule shall be rescinded unless two days notice of the motion has been given and two-thirds of those present and voting vote therefore.
37. The Senate may resolve itself into a Committee of the Whole at any time on motion made for that purpose; and in forming a Committee of the Whole, the President shall leave the chair, and appoint a chairperson to preside in committee.
38. The President when performing the duties of the Chair may, at any time, name any member to perform the duties of the Chair.
39. The staff of the Senate shall be comprised of a clerk, an assistant clerk, a sergeant-at-arms, and a doorkeeper who are to be elected by the Senate, and such other personnel as the President shall appoint. The President shall define the duties of all members of the Senate staff which are not fixed by statute or otherwise ordered by the Senate.
40. Each member of the staff of the Senate shall be available on call to carry out the work of the Senate.
41. The committees shall promptly consider and report on all matters referred to them. The President may authorize such committees having a heavy load of investigation, re-drafting, research or amendments to meet as needed on non legislative days during the legislative session. The Clerk of the Senate shall prepare a list by number, title and sponsor of all Senate bills and resolutions in committee which have not been acted upon within one week before the deadline established for the transfer of bills and resolutions from the Senate to the House of Representatives, and he/she shall distribute this list to every member of the Senate as soon as it is prepared.
42. In all instances every member shall act in conformance with the duly adopted Ethical Guidelines and Opinions of the New Hampshire General Court.
43. Action on the floor of a report of the Committee on Finance or a Committee of Conference on either the general appropriations (budget) bill or the capital budget bill, shall not be taken by the Senate, until said report has been available from the Senate Clerk twenty-four hours in advance, in written form. Non-germane amendments and footnotes to such bills (except footnotes in explanation of the principal text of such bills or designating the use or restriction of any funds or portions thereof) are prohibited and shall not be allowed under any circumstances.

44. Personal Privilege: A Senator may, as a matter of personal privilege, defend his/her position on a bill, his/her integrity, his/her record, or his/her conduct, against unfair or unwarranted criticism, or may speak of an issue which relates to his/her rights, privileges or conveniences as a Senator; provided, however, the matters raised under personal privilege shall not be subject to questioning, answer, or debate, by another Senator. Personal Privilege remarks may be included in the Daily Journal if requested by the Senator, and in the Permanent Journal by vote of the Senate. A Senator may speak on other matters of his/her choosing and in such cases may be subject to questioning and/or answer according to the Rules of the Senate.
45. Any appeal from the ruling of the presiding officer shall be decided by majority vote of the members present and voting.
46. No new motion shall be admitted under color of amendment as a substitute for the motion under debate.
47. No officer or employee of the Senate during the session or any adjournment thereof shall purchase or contract for the purchase, pay or promise to pay any sum of money on behalf of the Senate or issue any requisition or manifest without the approval of the Senate President.
48. Deadlines:
 - (a) Monday, September 10, 2007 – First day to file legislation for 2008 Session
 - (b) The Office of Legislative Services shall not draft a Senate Bill or Resolution, unless a request by a member for drafting with complete information has been received not later than 5:00 p.m., Wednesday, October 24, 2007, for the 2008 Session
 - (c) The last day to sign-off legislation for the above filing period shall be Wednesday, November 21, 2007, at 12:00 p.m.
 - (d) The last day to sign-off legislation for a Senate Bill recommended by a Study Committee or Commission created by a Senate Bill shall be no later than 3:00 p.m. on Tuesday, January 15, 2008
 - (e) Thursday, March 06, 2008 – Deadline for Policy Committees to ACT on all Senate money bills, except bills exempted pursuant to Senate Rule 26(b)
 - (f) Thursday, March 20, 2008 – CROSSOVER – Last Day to ACT on all remaining Senate Bills
 - (g) Thursday, May 1, 2008 – Deadline for Policy Committees to ACT on all House money bills, except bills exempted pursuant to Senate Rule 26(b)
 - (h) Thursday, May 15, 2008 – Last Day to ACT on all remaining House bills
 - (i) Wednesday, May 21, 2008 – Last day to FORM Committees of Conference
 - (j) Friday, May 30, 2008 at 12:00 p.m. – Last day to SIGN Committee of Conference Reports
 - (k) Thursday, June 5, 2008 – Last day to ACT on Committee of Conference Reports
49. Any Senate member may make a request of the office of the Legislative Budget Assistant budget division, for technical staff assistance in the areas of finance, accounting and budgeting. The budget division may respond to that request when doing so will not interfere with the budget division's principle responsibilities as outlined in RSA 14:31-b, as determined by the Legislative Budget Assistant.

HOUSE MESSAGE

The House of Representatives has referred for Interim Study the following entitled Bills sent down from the Senate:

SB 251, allowing the board of medicine to issue licenses for physicians to engage in a correctional institution medical practice.

HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in the passage of the following entitled Bills sent down from the Senate:

SB 172-FN-L, allowing counties to share correctional facilities.

SB 179-FN-A, establishing an automated external defibrillator advisory commission.

SB 201, authorizing certain Keene state college campus safety officers to detain individuals pending arrest or protective custody.

HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

HB 91-FN, relative to lobbyist registration and statements, repealing the restriction on simultaneous employment and public service, and relative to regulation of volunteer public service.

HB 159, establishing an interbranch criminal and juvenile justice council.

HB 211-FN, requiring that driver's license applicants be informed of and examined on laws relating to blind pedestrians.

HB 241, relative to permissible campaign contributions by business organizations and labor unions.

HB 285, relative to voting machines.

HB 291, relative to licensure of fireworks sellers.

HB 315, relative to criminal background checks of prospective municipal employees through the division of state police.

HB 330, establishing a task force to study the feasibility of supplying laptop computers to all 7th grade children in the state.

HB 331, relative to time limits on design review.

HB 563, relative to obtaining birth certificates for stillborn children.

HB 632-FN, relative to the penalty for death resulting from the trafficking of controlled drugs.

HB 730-FN, increasing the maximum fine for speeding in a highway construction or maintenance zone.

HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

HB 359-FN, relative to recovery of medical assistance from an estate.

HB 373, relative to unlawful possession of alcohol by a minor.

HB 385-FN, relative to licensing and insurance fees.

HB 415-FN, establishing a geothermal assessment project.

HB 474, excluding septic and sewage treatment facilities from the tax exemption for water and air pollution control facilities.

HB 537, establishing a task force on homeless teenagers.

HB 581-FN, relative to the penalty for purposely mistreating service animals.

HB 589-FN, relative to the calculation of concurrent and consecutive terms of imprisonment.

HB 595-FN, requiring the commissioner of the department of corrections to adopt rules establishing a policy on and procedures for an internal clemency board to review and make recommendations on requests for sentence modifications.

HB 682, relative to guardianship of a minor.

HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

HB 173-FN-A, relative to the promotion, acquisition, and retention of a large animal veterinarian in those areas of the state where there is a need, and making an appropriation therefor.

HB 358, relative to the procedure for listing candidates on election ballots.

HB 702, relative to continued jurisdiction in child protection cases.

HB 740-FN, relative to mental health services.

HB 765-FN, establishing a committee to study the financial liability for placement of a child with a disability.

HB 777-FN-A, relative to agricultural exemptions from alteration of terrain permitting requirements and penalties for site development.

HB 837, relative to easement interests under the land and community heritage investment program.

HB 858-FN, relative to discount medical plan organization.

HB 901, relative to nondriver's identification cards.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in its amendments to the following entitled House Bills sent down from the Senate:

HB 692, relative to workers' compensation.

REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bill(s):

HB 692, relative to workers' compensation.

Sen. Gatsas moved adoption of the Report of Committee on Enrolled Bills.

Committee Report adopted.

INTRODUCTION OF SENATE BILL(S)

Sen. Foster offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Senate Clerk, Senate legislation numbered from **SB 306** to **SCR 9**, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

Resolution adopted.

First and Second Reading and Referral

08-2399

SB 306-FN, relative to allowing video gaming in Coos county, building a casino in Berlin, and establishing a fund to assist with the payment of property taxes. (Gallus, Dist 1; Gionet, Graf 3; Ingram, Rock 4: Ways and Means)

08-2647

SB 312-FN, relative to insurance coverage for obesity and morbid obesity. (Clegg, Dist 14; Gottesman, Dist 12; Cilley, Dist 6; Fuller Clark, Dist 24; Gallus, Dist 1; Reynolds, Dist 2; Marshall Quandt, Rock 13: Commerce, Labor and Consumer Protection)

08-2655

SB 314-FN, relative to the use of certain prior service credit in the retirement system for purposes of eligibility for medical benefits. (Roberge, Dist 9; Barnes, Dist 17; Hawkins, Hills 18; Graham, Hills 18; Villeneuve, Hills 18; Spaulding, Hills 18; Ulery, Hills 27: Executive Departments and Administration)

08-2685

SB 323-FN, relative to terms of release and notice of hearings in the parole of prisoners. (Downing, Dist 22; D'Allesandro, Dist 20; Pearson, Rock 4; Winchell, Rock 6; Bettencourt, Rock 4: Judiciary)

08-2687

SB 324-FN, consolidating all substance abuse services in the office of alcohol and drug abuse prevention within the department of health and human services. (Sgambati, Dist 4; Janeway, Dist 7; Burling, Dist 5; MacKay, Merr 11; Reeve, Belk 4; Donovan, Sull 4; Arsenaault, Belk 4; Nordgren, Graf 9: Health and Human Services)

08-2690

SB 325-FN-A, relative to child care provider reimbursement rates. (Sgambati, Dist 4; Reynolds, Dist 2; Gile, Merr 10: Finance)

08-2702

SB 326-FN, relative to salaries for certain unclassified positions. (Burling, Dist 5; Sgambati, Dist 4; Hawkins, Hills 18; Weyler, Rock 8: Executive Departments and Administration)

08-2711

SB 327-FN, relative to compensation for state employees injured in the line of duty. (Hassan, Dist 23; Barnes, Dist 17; Burling, Dist 5; Cilley, Dist 6; Clegg, Dist 14; D'Allesandro, Dist 20; Fuller Clark, Dist 24; Gallus, Dist 1; Janeway, Dist 7; Kelly, Dist 10; Kenney, Dist 3; Letourneau, Dist 19; Reynolds, Dist 2; Sgambati, Dist 4; Marshall Quandt, Rock 13; T. Russell, Rock 13; W. Knowles, Straf 6; Welch, Rock 8: Executive Departments and Administration)

08-2740

SB 330-FN, relative to video lottery machines at certain pari-mutuel facilities. (D'Allesandro, Dist 20: Ways and Means)

08-2741

SB 331-FN, establishing new positions and realigning functions at the department of corrections. (D'Allesandro, Dist 20; Janeway, Dist 7; Hassan, Dist 23; Odell, Dist 8; Gallus, Dist 1: Executive Departments and Administration)

08-2743

SB 332-FN, relative to resomation of human remains. (DeVries, Dist 18; Rochette, Hills 20: Executive Departments and Administration)

08-2786

SB 342-FN-LOCAL, establishing a mechanism for expediting relief from municipal actions which deny, impede, or delay qualified proposals for workforce housing. (Fuller Clark, Dist 24; Larsen, Dist 15; Reynolds, Dist 2; Burling, Dist 5; DeVries, Dist 18; Foster, Dist 13; Hassan, Dist 23: Public and Municipal Affairs)

08-2799

SB 344-FN, relative to capital murder. (Kenney, Dist 3; Letourneau, Dist 19; Casey, Rock 11; C. Brown, Carr 1; Crane, Hills 21: Judiciary)

08-2807

SB 346-FN, relative to the regulation of fuel gas fitters by the state fire marshal. (D'Allesandro, Dist 20; Letourneau, Dist 19: Executive Departments and Administration)

08-2825

SB 348-FN, relative to the certification of forensic counselors by the board of forensic counselors. (Fuller Clark, Dist 24; Cilley, Dist 6: Executive Departments and Administration)

08-2858

SB 354-FN-A, establishing a spending cap on state budget requests. (Kenney, Dist 3; Crane, Hills 21; Ingbreton, Graf 5: Finance)

08-2861

SB 355-FN, relative to room and board scholarships for children of firefighters and police officers killed in the line of duty. (Kenney, Dist 3: Education)

08-2147

SB 411, relative to the confidentiality of health care records during the investigation of child abuse and neglect cases. (Sgambati, Dist 4; Odell, Dist 8; Burling, Dist 5; Estabrook, Dist 21; McLeod, Graf 2; B. Richardson, Ches 5; Julie Brown, Straf 1: Judiciary)

08-2313

SB 422, adding an energy section to zoning and planning master plans. (Fuller Clark, Dist 24; Borden, Rock 18: Public and Municipal Affairs)

08-2630

SB 436, enabling certain persons to vote in primaries prior to turning 18 years of age. (Foster, Dist 13; Burling, Dist 5; D'Allesandro, Dist 20; Odell, Dist 8; Reynolds, Dist 2; Clemons, Hills 24; Gargas, Hills 5; Drisko, Hills 5: Election Law and Internal Affairs)

08-2632

SB 437, relative to access to voter database information. (Burling, Dist 5; DeVries, Dist 18; Clemons, Hills 24: Election Law and Internal Affairs)

08-2635

SB 460, relative to the definition of surviving issue. (Foster, Dist 13: Judiciary)

08-2642

SB 461, relative to accessibility of genealogical records to the public. (D'Allesandro, Dist 20: Public and Municipal Affairs)

08-2650

SB 462, limiting liability for overseers of public welfare when acting in the course of their official duties. (Burling, Dist 5; Sgambati, Dist 4; Barnes, Dist 17; Hassan, Dist 23; Roberge, Dist 9: Public and Municipal Affairs)

08-2663

SB 463, establishing an investment committee in the New Hampshire retirement system. (Burling, Dist 5; Fuller Clark, Dist 24; Kelly, Dist 10; Cilley, Dist 6; Downing, Dist 22; Janeway, Dist 7: Executive Departments and Administration)

08-2669

SB 464, relative to the number of children in a licensed foster home. (Roberge, Dist 9; Kenney, Dist 3; Barnes, Dist 17; Letourneau, Dist 19; Gatsas, Dist 16; Clegg, Dist 14; Itse, Rock 9; Mooney, Hills 19; N. Elliott, Hills 19; Ulery, Hills 27: Health and Human Services)

08-2686

SB 465, relative to the laws regulating trusts and trust companies in New Hampshire. (D'Allesandro, Dist 20; Odell, Dist 8; Hassan, Dist 23; Clegg, Dist 14; Reardon, Merr 11; Moran, Hills 18; Hunt, Ches 7: Commerce, Labor and Consumer Protection)

08-2691

SB 466, relative to probate court jurisdiction over special needs trust. (Sgambati, Dist 4; Reynolds, Dist 2; Bleyler, Graf 9; MacKay, Merr 11: Health and Human Services)

08-2705

SB 467, relative to taking lobsters and crabs. (Hassan, Dist 23; Fuller Clark, Dist 24; Cilley, Dist 6; Abbott, Rock 12; Henson, Rock 13; Kennedy, Rock 13; M. Preston, Rock 14; Webber, Rock 14: Wildlife, Fish and Game and Agriculture)

08-2709

SB 468, relative to the reinsurance pool. (Hassan, Dist 23; Sgambati, Dist 4; Butler, Carr 1; Nord, Rock 1: Commerce, Labor and Consumer Protection)

08-2717

SB 469, allowing fish and game license agents to collect an additional convenience fee. (Gallus, Dist 1; Odell, Dist 8; Cilley, Dist 6; Abbott, Rock 12; L'Heureux, Hills 19; Remick, Coos 2; E. Merrick, Coos 2: Wildlife, Fish and Game and Agriculture)

08-2720

SB 470, allowing lobbyists and those connected with lobbyists to sit on committees established by the judicial branch. (Burling, Dist 5: Election Law and Internal Affairs)

08-2723

SB 471, allowing local building codes to add requirements for installation and inspection of heating and ventilation systems. (Barnes, Dist 17: Public and Municipal Affairs)

08-2724

SB 472, relative to consumer protection from certain practices of payday loan, small loan, and title loan lenders. (Gottesman, Dist 12; Barnes, Dist 17; Letourneau, Dist 19; Roberge, Dist 9; Gallus, Dist 1; Reynolds, Dist 2; Sgambati, Dist 4; Burling, Dist 5; Janeway, Dist 7; Kelly, Dist 10;

DeVries, Dist 18; Estabrook, Dist 21; Hassan, Dist 23; Fuller Clark, Dist 24; Spratt, Hills 3; Marsh, Rock 17: Commerce, Labor and Consumer Protection)

08-2747

SB 473, naming the Prisoners of War/Missing in Action Memorial in Hesky Park in the town of Meredith. (Reynolds, Dist 2; Letourneau, Dist 19; Barnes, Dist 17; Sgambati, Dist 4; Arsenault, Belk 4; Wood, Belk 4; F. Tilton, Belk 4: Public and Municipal Affairs)

08-2749

SB 474, relative to registers of deeds and reports of county officers. (Gallus, Dist 1; Letourneau, Dist 19; Odell, Dist 8; Theberge, Coos 4; Carolyn Brown, Carr 1; Sorg, Graf 3; Gionet, Graf 3: Public and Municipal Affairs)

08-2751

SB 475, relative to the definition of advance fees in the real estate practice act. (Gallus, Dist 1; Odell, Dist 8; Roberge, Dist 9; Gatsas, Dist 16; Carolyn Brown, Carr 1; Gionet, Graf 3; Kopka, Hills 26; Buco, Carr 1: Executive Departments and Administration)

08-2752

SB 476, relative to operation of OHRVs on state highways in Coos county. (Gallus, Dist 1; Barnes, Dist 17; Ingersoll, Coos 4; D. Russell, Belk 6: Transportation and Interstate Cooperation)

08-2756

SB 477, requesting that the attorney general seek a ruling from the supreme court relative to whether New Hampshire may opt out of enforcing the provisions of the Master Settlement Agreement. (Clegg, Dist 14; Hassan, Dist 23; Baldasaro, Rock 3; Emerton, Hills 7; Marshall Quandt, Rock 13; Daniels, Hills 6; Chandler, Carr 1: Ways and Means)

08-2759

SB 478, relative to processing absentee ballots. (Kelly, Dist 10; Burling, Dist 5; Letourneau, Dist 19; Weed, Ches 3; Espieffs, Ches 3; Roberts, Ches 3: Election Law and Internal Affairs)

08-2764

SB 479, relative to the vote required for passage of school bonds. (Estabrook, Dist 21; Kelly, Dist 10; M. Smith, Straf 7: Public and Municipal Affairs)

08-2767

SB 480, repealing a requirement that the fish and game department publish certain hunting season information in newspapers in each county. (Gallus, Dist 1; Janeway, Dist 7; Gatsas, Dist 16; D'Allesandro, Dist 20; L'Heureux, Hills 19; Abbott, Rock 12; Theberge, Coos 4; Stohl, Coos 1: Wildlife, Fish and Game and Agriculture)

08-2768

SB 481, relative to the bond requirement for completion of local and state public works projects. (Gallus, Dist 1: Commerce, Labor and Consumer Protection)

08-2769

SB 482, relative to ethical standards for volunteer service in the executive branch. (Burling, Dist 5: Election Law and Internal Affairs)

08-2792

SB 483, establishing a committee to study in-home intervention and counseling services for families and children charged with a crime or

designated in need of services by the juvenile court. (Hassan, Dist 23; Burling, Dist 5; Cilley, Dist 6; Clegg, Dist 14; Fuller Clark, Dist 24; Gallus, Dist 1; Janeway, Dist 7; Kelly, Dist 10; Kenney, Dist 3; Odell, Dist 8; Reynolds, Dist 2; Roberge, Dist 9; Sgambati, Dist 4; Gile, Merr 10; D. Cote, Hills 23; Welch, Rock 8; Rosenwald, Hills 22; W. Knowles, Straf 6: Judiciary)

08-2794

SB 484, establishing a commission to investigate alternatives to incarceration for nonviolent offenders and cost savings related to such alternatives. (Hassan, Dist 23; Burling, Dist 5; Sgambati, Dist 4; Janeway, Dist 7; D'Allesandro, Dist 20; Marshall Quandt, Rock 13; W. Knowles, Straf 6; D. Cote, Hills 23; Welch, Rock 8: Public and Municipal Affairs)

08-2814

SB 485, relative to party designations for voters. (Burling, Dist 5; Cilley, Dist 6; Clemons, Hills 24: Election Law and Internal Affairs)

08-2824

SB 486, relative to the duties and responsibilities of special deputy forest rangers. (Cilley, Dist 6; Gallus, Dist 1; Odell, Dist 8; Barnes, Dist 17; Hassan, Dist 23; Phinizy, Sull 5; Snow, Rock 1; Wheeler, Merr 6; Powers, Rock 16; Solomon, Graf 10: Wildlife, Fish and Game and Agriculture)

08-2829

SB 487, clarifying the law regarding bail pending appeal. (Foster, Dist 13: Judiciary)

08-2836

SB 488, relative to jurisdiction of the probate courts and superior courts. (Foster, Dist 13: Judiciary)

08-2840

SB 489, establishing a commission to study erecting a fire tower on Copple Crown mountain in Wolfeboro. (Kenney, Dist 3; Solomon, Graf 10; Knox, Carr 4: Public and Municipal Affairs)

08-2850

SB 490-FN, relative to fees for special number plates for veterans. (Sgambati, Dist 4; Barnes, Dist 17; Burling, Dist 5; Hassan, Dist 23; Janeway, Dist 7; Reynolds, Dist 2; Kjellman, Merr 5; Wood, Belk 4; Roberts, Ches 3; Baldasaro, Rock 3: Transportation and Interstate Cooperation)

08-2852

SB 491, excluding the value of a view from property tax assessment. (Kenney, Dist 3: Ways and Means)

08-2866

SB 492, relative to persons designated to fill vacancies on the ballot. (Cilley, Dist 6; Burling, Dist 5; DeVries, Dist 18; Perry, Straf 3: Election Law and Internal Affairs)

08-2867

SB 493, allowing certain tax exempt organizations to be defined as charitable organizations for purposes of games of chance operations. (Cilley, Dist 6; D'Allesandro, Dist 20; Downing, Dist 22; Hunt, Ches 7; Butler, Carr 1; Marshall Quandt, Rock 13; McEachern, Rock 16: Ways and Means)

08-2135

SB 494-FN, relative to compulsory coverage requirements under workers' compensation. (Gallus, Dist 1; Gatsas, Dist 16; Kenney, Dist 3; Odell,

Dist 8; Roberge, Dist 9; Bragdon, Dist 11; Clegg, Dist 14; Barnes, Dist 17; Letourneau, Dist 19; Downing, Dist 22; Bulis, Graf 1; Remick, Coos 2: Commerce, Labor and Consumer Protection)

08-2637

SB 495-FN, prohibiting Internet solicitation and exploitation of children. (Foster, Dist 13; Letourneau, Dist 19; DeVries, Dist 18; Welch, Rock 8; W. Knowles, Straf 6: Judiciary)

08-2695

SB 496, establishing a commission to study incentives for providers of home and community-based care. (Sgambati, Dist 4; Estabrook, Dist 21; Reynolds, Dist 2; Burling, Dist 5; Kenney, Dist 3; Fuller Clark, Dist 24; McLeod, Graf 2; Emerton, Hills 7; Donovan, Sull 4: Health and Human Services)

08-2698

SB 497-FN, relative to the security of bonds or notes issued to the New Hampshire Municipal Bond Bank. (Janeway, Dist 7; Kurk, Hills 7: Ways and Means)

08-2699

SB 498, relative to state guarantees of certain municipal debt issues. (Janeway, Dist 7: Finance)

08-2701

SB 499-FN, relative to penalties for unauthorized disclosure of confidential matters in legislative ethics proceedings. (Burling, Dist 5; Roberge, Dist 9; Wall, Straf 7: Election Law and Internal Affairs)

08-2706

SB 500-FN, relative to certain insurance fraud. (Hassan, Dist 23; Barnes, Dist 17; DeVries, Dist 18; Goley, Hills 8; Holden, Hills 7: Commerce, Labor and Consumer Protection)

08-2707

SB 501-FN, relative to a workers' compensation exclusion. (Hassan, Dist 23; Cilley, Dist 6; DeVries, Dist 18; Estabrook, Dist 21; Fuller Clark, Dist 24; Gottesman, Dist 12; Janeway, Dist 7; Kelly, Dist 10; Larsen, Dist 15; Vachon, Straf 3; Hunt, Ches 7; Hatch, Coos 3: Commerce, Labor and Consumer Protection)

08-2708

SB 502-FN, relative to unemployment compensation. (Hassan, Dist 23; Gottesman, Dist 12; DeVries, Dist 18; Fuller Clark, Dist 24; Reynolds, Dist 2; Burling, Dist 5: Commerce, Labor and Consumer Protection)

08-2716

SB 503-FN, relative to authorizing temporary registrations of off-highway recreational vehicles for nonresidents. (Gallus, Dist 1; Kenney, Dist 3; Letourneau, Dist 19; Downing, Dist 22; D'Allesandro, Dist 20; Ingersoll, Coos 4; Remick, Coos 2; Theberge, Coos 4: Transportation and Interstate Cooperation)

08-2732

SB 504-FN, restricting the number of puppies to be sold by commercial kennels. (Roberge, Dist 9; Cilley, Dist 6; Fuller Clark, Dist 24; Skinder, Sull 1; Reagan, Rock 1; Cooney, Graf 7: Public and Municipal Affairs)

08-2735

SB 505-FN, relative to the moratorium on certain nursing home beds. (Gallus, Dist 1; King, Coos 1; Theberge, Coos 4: Health and Human Services)

08-2766

SB 506, naming the Elm Street bridge in Newport after Specialist Justin A. Rollins. (Odell, Dist 8; Barnes, Dist 17; Kenney, Dist 3; Letourneau, Dist 19; Hassan, Dist 23; Burling, Dist 5; Rodeschin, Sull 2; Cloutier, Sull 4; Skinder, Sull 1: Public and Municipal Affairs)

08-2742

SB 507-FN, relative to extended terms of imprisonment for street gang members. (Gatsas, Dist 16; Barnes, Dist 17; Cilley, Dist 6; Clegg, Dist 14; D'Allesandro, Dist 20; Downing, Dist 22; Foster, Dist 13; Gallus, Dist 1; Kenney, Dist 3; Odell, Dist 8; Roberge, Dist 9: Judiciary)

08-2744

SB 508-FN-LOCAL, relative to municipal deposits. (Reynolds, Dist 2; Burling, Dist 5; Sgambati, Dist 4; Gallus, Dist 1; Kenney, Dist 3; Hassan, Dist 23; R. Williams, Merr 11; P. Preston, Graf 8; Friedrich, Graf 6; Aguiar, Graf 6: Public and Municipal Affairs)

08-2755

SB 509-FN, requiring tobacco cessation therapy under the state Medicaid program. (Clegg, Dist 14; Gatsas, Dist 16; Downing, Dist 22; Hassan, Dist 23; Sgambati, Dist 4; DeVries, Dist 18; Carson, Rock 3: Health and Human Services)

08-2762

SB 510-FN-A, relative to fees for terrain alteration permits. (Gallus, Dist 1; Gatsas, Dist 16; Roberge, Dist 9; Bulis, Graf 1; Chandler, Carr 1; Gionet, Graf 3: Energy, Environment and Economic Development)

08-2775

SB 511-FN, relative to requirements for school building aid grants. (Fuller Clark, Dist 24; Serlin, Rock 16; Harvey, Hills 21; Powers, Rock 16; Borden, Rock 18: Education)

08-2795

SB 512-FN, relative to emergency management powers. (Hassan, Dist 23; Sgambati, Dist 4; Downing, Dist 22; Gallus, Dist 1; MacKay, Merr 11; Irwin, Hills 3; Donovan, Sull 4; Batula, Hills 19: Health and Human Services)

08-2806

SB 513-FN, relative to fighting animals. (Kenney, Dist 3; Roberge, Dist 9; Crane, Hills 21; Schmidt, Straf 4; W. Knowles, Straf 6; Parkhurst, Ches 4; Matthew Quandt, Rock 13: Public and Municipal Affairs)

08-2818

SB 514-FN, relative to mercury exposure reduction and requiring insurance coverage for mercury-free fillings, vaccines, and injections for certain persons. (Kenney, Dist 3; Heard, Carr 3: Health and Human Services)

08-2823

SB 515-FN-A, relative to relief from business taxes for self-employed business owners returning from active duty deployment in the armed forces. (Cilley, Dist 6; Downing, Dist 22; Burling, Dist 5; Letourneau, Dist 19; Baldasaro, Rock 3: Ways and Means)

08-2841

SB 516-FN-LOCAL, relative to aid for county bridges. (Kenney, Dist 3; Pilliod, Belk 5; J. Thomas, Belk 5: Transportation and Interstate Cooperation)

08-2843

SB 517-FN, relative to commercial advertising on toll booths. (Kenney, Dist 3: Transportation and Interstate Cooperation)

08-2865

SB 518-FN, relative to agricultural restricted covenants. (Cilley, Dist 6; Fuller Clark, Dist 24; Essex, Hills 1; O'Connell, Hills 6; Snow, Rock 1; Phinizy, Sull 5: Wildlife, Fish and Game and Agriculture)

08-2678

SB 519-FN, imposing a per diem fine on dam owners and operators for failure to repair damage. (Cilley, Dist 6; DeVries, Dist 18; Fuller Clark, Dist 24; Nord, Rock 1: Energy, Environment and Economic Development)

08-2798

SB 520-FN-A, requiring the state veterans council to issue a state veterans handbook biennially. (Kenney, Dist 3; Roberts, Ches 3; Baldasaro, Rock 3: Election Law and Internal Affairs)

08-2839

SB 521-FN, increasing the maximum scholarship amount available from the national guard scholarship fund. (Kenney, Dist 3; Barnes, Dist 17; Letourneau, Dist 19; Hassan, Dist 23; J. Thomas, Belk 5; Roberts, Ches 3; D. Smith, Hills 22; Villeneuve, Hills 18: Election Law and Internal Affairs)

08-2884

SB 522-FN, relative to licensing requirements for small quantity biodiesel producers and distributors. (Janeway, Dist 7; Barnes, Dist 17; Borden, Rock 18: Executive Departments and Administration)

08-2778

SB 523, relative to requirements for the estuary alliance for sewage treatment to take and hold land. (Fuller Clark, Dist 24; Borden, Rock 18; Grote, Rock 18; Stiles, Rock 15: Energy, Environment and Economic Development)

08-2633

SB 524, relative to eligibility for persons to receive the elderly property tax exemption. (Foster, Dist 13; Barnes, Dist 17; Burling, Dist 5: Public and Municipal Affairs)

08-2636

SB 525, establishing the fourth Sunday in May as Emergency Medical Technician Memorial Day. (Cilley, Dist 6; Clegg, Dist 14; DeVries, Dist 18; Gallus, Dist 1; Hassan, Dist 23; Kelly, Dist 10; Kenney, Dist 3; Letourneau, Dist 19; Odell, Dist 8; Reynolds, Dist 2; Roberge, Dist 9; Sgambati, Dist 4; W. Knowles, Straf 6: Executive Departments and Administration)

08-2736

SB 526, relative to the death benefit for police officers and firefighters killed in the line of duty. (D'Allesandro, Dist 20; Barnes, Dist 17; Burling, Dist 5; Downing, Dist 22; DeVries, Dist 18; Clegg, Dist 14; D. Eaton, Ches 2; Welch, Rock 8: Executive Departments and Administration)

08-2896

SJR 1, prohibiting the department of health and human services from adopting proposed administrative rule He-P 1906.02. (Sen. Burling, Dist 5; Sen. Gottesman, Dist 12; Sen. DeVries, Dist 18; Sen. Fuller Clark, Dist 24; Rep. Patten, Carr 4; Rep. Pilotte, Hills 16; Rep. MacKay, Merr 11; Rep. Schmidt, Straf 4; Rep. Millham, Belk 5: Health and Human Services)

08-2859

SCR 6, urging the federal government to allow certain nursing homes to use a number of beds for respite care. (Kenney, Dist 3; Schulze, Hills 26; MacKay, Merr 11: Health and Human Services)

08-2411

SCR 7, urging the United States Department of Defense and Congress to restore full services to the Manchester Veterans Administration Hospital. (Barnes, Dist 17; Cilley, Dist 6; Clegg, Dist 14; D'Allesandro, Dist 20; DeVries, Dist 18; Downing, Dist 22; Estabrook, Dist 21; Foster, Dist 13; Fuller Clark, Dist 24; Gallus, Dist 1; Gatsas, Dist 16; Gottesman, Dist 12; Hassan, Dist 23; Kelly, Dist 10; Kenney, Dist 3; Letourneau, Dist 19; Odell, Dist 8; Reynolds, Dist 2; Roberge, Dist 9; Sgambati, Dist 4; Burling, Dist 5; Coughlin, Hills 4: Election Law and Internal Affairs)

08-2757

SCR 8, urging the United States Department of Defense to restore the designations of Prisoner of War and Missing in Action to those servicemen and servicewomen who are missing in operations in Afghanistan and Iraq. (Barnes, Dist 17; Burling, Dist 5; Cilley, Dist 6; Clegg, Dist 14; D'Allesandro, Dist 20; Downing, Dist 22; Estabrook, Dist 21; Fuller Clark, Dist 24; Gallus, Dist 1; Gatsas, Dist 16; Gottesman, Dist 12; Hassan, Dist 23; Janeway, Dist 7; Kelly, Dist 10; Kenney, Dist 3; Larsen, Dist 15; Letourneau, Dist 19; Reynolds, Dist 2; Roberge, Dist 9; Odell, Dist 8: Election Law and Internal Affairs)

08-2863

SCR 9, urging Congress to fund a community-based outpatient clinic for veterans in Keene. (Kenney, Dist 3; Roberts, Ches 3: Election Law and Internal Affairs)

Out of Recess.

LATE SESSION

Sen. Foster moved that the Senate adjourn from the Late Session.

Motion to adjourn adopted.

Adjournment from the Late Session.

January 17, 2008

The Senate reconvened at 10:00 a.m., a quorum being present.

The Reverend Canon Timothy Rich, chaplain to the Senate, offered the following remarks and prayer:

Let me begin by saying that I'm honored that Sen. Larsen has invited me – invited me to be your chaplain for this year. And as I stand before you for the first time, humbled not only by the task, but also by the historical significance of this day. For around the globe, many are celebrating "Thomas Crapper Day," in honor of the man who's associated with the development of the modern flush toilets. I hope that the gift of my prayers might, in some small way, contribute to keeping fresh and clean, and even holy, the work of this group. Next week, people in our state and around the country will celebrate the life of a truly remarkable and holy man, the Reverend Dr. Martin Luther King, Jr. Dr. King once wrote, "Everybody can be great, because anybody can serve. You don't have to know Einstein's theory of relativity to serve. You only need a heart full of grace, a soul generated by love." As so often the case with his writings, these words both humble and inspire. Let us pray:

O God of unimaginable heart and infinite love: So fill the hearts of these Your servant Senators with grace, so ground their souls in Your love, so free them from the ambition to be great, that their deliberations and decisions might allow the lives of the least fortunate amongst those whom they serve to be just a bit greater tomorrow than in the days before. Amen

Sen. Reynolds led the Pledge of Allegiance.

INTRODUCTION OF GUESTS

Chester Academy students.

Bill and Judy Rhegetto, District 16 constituents.

Senate Page: Paul Sanders, West Milan.

COMMITTEE REPORTS

HB 304, relative to the criteria under which guardianship over a minor is granted. Education Committee. Inexpedient to Legislate, Vote 4-0. Senator Bragdon for the committee.

SENATOR BRAGDON: Thank you, Madam President. I move inexpedient to legislate on HB 304. This bill precludes granting guardianship over a minor –

PRESIDENT LARSEN: Sen. Bragdon, the motion is inexpedient to legislate. Is there any discussion?

SENATOR BRAGDON: I knew that.

PRESIDENT LARSEN: Go ahead.

SENATOR BRAGDON: Thank you. I move inexpedient to legislate on HB 304. This bill precludes granting guardianship over a minor, primarily to allow the minor to participate in athletic activities. The issue arose in a district where allegedly guardianship from out-of-district and even out-of-state students, was assigned to district residents, to allow the students to participate in sports. However, the Education Committee believes existing laws already handles this situation. Please join the Committee in voting HB 304 inexpedient to legislate.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on HB 304.

Motion of Inexpedient to Legislate adopted.

SPECIAL ORDER

President Larsen moved, without objection, that SB 415 (found in Calendar Addendum 2B) would be taken up next in order.

SB 415, relative to the effective date of the compulsory school attendance law. Education Committee. Ought to Pass, Vote 6-0, Senator Estabrook for the committee.

SENATOR ESTABROOK: Thank you, Madam President. I move Senate Bill 415 ought to pass. This bill amends the effective date of House Bill 87 from the 2007 Legislative Session, which was relative to compulsory school attendance, by providing that on June 9, 2009, the age of compulsory school attendance shall be raised from 16 years to 18 years of age. When Senate Bill 18 passed – was introduced, it had an effective date of July '09. When Senate Bill 18 passed the Senate, as amended by the Senate, it had an effective date of July '09. And this date was chosen purposely as a policy decision to allow time for the planning and development of alternative education programs. That planning and de-

velopment is well underway, but it has not reached fruition. So even at this time, it remains the wisest policy decision to again choose July '09 as the effective date for changing the date – the age of compulsory attendance. When HB 87 reached the Senate floor, we were aware that they were amending the same statute. And we were careful to bring forward a floor amendment that we thought dealt with any potential conflicts. No one anticipated the conflicting effective dates of HB 87 and SB 18 during the enrolled bills process. And no one knew that they would be merged. We recommend, the Education Committee unanimously recommends that we return to 7/09 as the effective date for raising the age of compulsory attendance, and that is exactly what Senate Bill 415 would do. We urge your support.

The question is on the adoption of committee recommendation of Ought to Pass on SB 415.

Motion of Ought to Pass is adopted, bill ordered to Third Reading.

SB 158, relative to review of activities affecting surface waters. Energy, Environment and Economic Development Committee. Ought to Pass with Amendment, Vote 5-0. Senator Hassan for the committee.

Energy, Environment, and Economic Development

December 12, 2007

2008-0010s

06/10

Amendment to SB 158

Amend the bill by replacing all after the enacting clause with the following:

1 Purpose. This act provides for technical review and certification of proposed activities affecting surface waters to ensure that water quality standards appropriate to the legislative classification of the waters are attained during construction or operation of the proposed activity. The act makes New Hampshire statutes consistent with section 401 of the federal Clean Water Act for activities requiring federal permits or licenses, and extends the review to activities requiring registration under RSA 488:3.

2 New Paragraphs; Enforcement of Classification. Amend RSA 485-A:12 by inserting after paragraph II the following new paragraphs:

III. No activity that requires a license, permit, or registration with the federal government and that may result in a discharge to surface waters of the state may commence unless the department certifies that construction or operation of the proposed activity complies with the state surface water quality standards applicable to the classification for the receiving surface water body. The department shall provide its response to a request for certification to the federal agency or authority responsible for issuing the license, permit, or registration. Certification shall include any conditions on, modifications to, or monitoring of the proposed activity necessary to provide assurance that the proposed activity complies with applicable surface water quality standards. The department may enforce compliance with any such conditions, modifications, or monitoring requirements as provided in RSA 485-A:22.

IV. No activity that involves water withdrawal or diversion of surface water that requires registration under RSA 488:3 and which was not in operation as of July 1, 2008, may commence unless the department certifies that the withdrawal or diversion complies with state surface water quality standards applicable to the classification for the surface water

body. The certification shall include any conditions on, modifications to, or monitoring of the proposed activity necessary to provide reasonable assurance that the proposed activity complies with applicable surface water quality standards. The department may enforce compliance with any such conditions, modifications, or monitoring requirements as provided in RSA 485-A:22.

3 New Paragraph; Rulemaking. Amend RSA 485-A:6 by inserting after paragraph VI the following new paragraph:

VI-a. Procedures and criteria for requesting, reviewing, and granting certifications under RSA 485-A:12, III and IV.

4 Effective Date. This act shall take effect 60 days after its passage.

SENATOR HASSAN: Thank you, Madam President. I move that Senate Bill 158 ought to pass with amendment. This bill requires the Department of Environmental Services to certify that certain activities that result in discharge to, or withdrawal from, surface waters comply with New Hampshire water quality standards. The new amendment further clarifies technical details, and how DES will monitor such activities. The protection of our state's surface waters is very important, and this amended legislation gives DES the proper authority to manage such a task. The Energy, Environment and Economic Development Committee requests your support for the motion of ought to pass with amendment on Senate Bill 158. Thank you.

The question is on the adoption of Committee Amendment 0010s.

Committee Amendment 0010s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 158.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 259, establishing state appliance and equipment energy efficiency standards. Energy, Environment and Economic Development Committee. Ought to Pass with Amendment, Vote 5-0. Senator Fuller Clark for the committee.

Sen. Fuller Clark, Dist. 24

December 10, 2007

2008-0006s

03/04

Amendment to SB 259

Amend the bill by replacing all after the enacting clause with the following:

1 New Chapter; Minimum Energy Efficiency Standards for Certain Products. Amend RSA by inserting after chapter 339-F the following new chapter:

CHAPTER 339-G

MINIMUM ENERGY EFFICIENCY STANDARDS FOR CERTAIN PRODUCTS

339-G:1 Definitions. In this chapter:

I. "Ballast" means a device used with an electric discharge lamp to obtain the necessary voltage, current, and waveform for starting and operating the lamp.

II. "Bottle-type water dispenser" means a water dispenser that uses a bottle or reservoir as the source of potable water.

III. "Commission" means the public utilities commission.

IV. "Commercial hot food holding cabinet" means a heated, fully-enclosed compartment with one or more solid or glass doors that are designed to maintain the temperature of hot food that has been cooked in a separate appliance. "Commercial hot food holding cabinet" does not include heated glass merchandizing cabinets, drawer warmers, or cook-and-hold appliances.

V. "Compensation" means money or any other valuable thing, regardless of form, received or to be received by a person for services rendered.

VI. "Electricity ratio" means the ratio of furnace electricity use to total furnace energy use. $\text{Electricity ratio} = (3.412 \cdot E_{AE}) / (1000 \cdot E_F + 3.412 \cdot E_{AE})$ where E_{AE} (average annual auxiliary electrical consumption) and E_F (average annual fuel energy consumption) are defined in Appendix N to subpart B of part 430 of title 10 of the Code of Federal Regulations and E_F is expressed in millions of BTUs per year.

VII. "High-intensity discharge lamp" means a lamp in which light is produced by the passage of an electric current through a vapor or gas and in which the light-producing arc is stabilized by bulb wall temperature and the arc tube has a bulb wall loading in excess of 3 watts per square centimeter.

VIII. "Metal halide lamp" means a high-intensity discharge lamp in which the major portion of the light is produced by radiation of metal halides and their products of dissociation, possibly in combination with metallic vapors.

IX. "Metal halide lamp fixture" means a light fixture designed to be operated with a metal halide lamp and a ballast for a metal halide lamp.

X. "Probe-start metal halide ballast" means a ballast used to operate metal halide lamps, which does not contain an igniter and which instead starts lamps by using a third starting electrode probe in the arc tube.

XI. "Residential boiler" means a self-contained low-pressure appliance for supplying steam or hot water primarily designed for space heating, which uses natural gas, propane, or home heating oil, and which has a heat input rate of less than 300,000 BTU per hour.

XII. "Residential furnace" means a self-contained space heater designed to supply heated air through ducts of more than 10 inches length and which utilizes only single-phase electric current, or single-phase electric current or DC current in conjunction with natural gas, propane, or home heating oil, and which:

(a) Is designed to be the principle heating source for the living space of one or more residences;

(b) Is not contained within the same cabinet with a central air conditioner whose rated cooling capacity is above 65,000 BTU per hour; and

(c) Has a heat input rate of less than 225,000 BTU per hour.

XIII. "Single-voltage external AC to DC power supply" means a device that:

(a) Is designed to convert line voltage AC input into lower voltage DC output;

(b) Is able to convert to only one DC output voltage at a time;

(c) Is sold with, or intended to be used with, a separate end-use product that constitutes the primary power load;

(d) Is contained within a separate physical enclosure from the end-use product;

(e) Is connected to the end-use product via a removable or hard-wired male/female electrical connection, cable, cord, or other wiring;

(f) Does not have batteries or battery packs, including those that are removable, that physically attach directly to the power supply unit;

(g) Does not have a battery chemistry or type selector switch and indicator light; or does not have a battery chemistry or type selector switch and a state of charge meter; and

(h) Has a nameplate output power less than or equal to 250 watts.

XIV. "State-regulated incandescent reflector lamp" means a lamp, not colored or designed for rough or vibration service applications, with an inner reflective coating on the outer bulb to direct the light, an E26 medium screw base, a rated voltage or voltage range that lies at least partially within 115 to 130 volts, and that falls into either of the following categories: a blown PAR (BPAR), bulged reflector (BR), elliptical reflector (ER), or similar bulb shape with a diameter equal to or greater than 2.25 inches; or a reflector (R), parabolic aluminized reflector (PAR), or similar bulb shape with a diameter of 2.25 to 2.75 inches, inclusive.

XV. "Temperature reset" means an automatic means for adjusting the temperature of the water supplied by a residential boiler such that an incremental change in inferred heat load produces a corresponding incremental change in supply water temperature. When there is no inferred heat load, such automatic means adjusts the supply water temperature to no more than 140 degrees Fahrenheit.

XVI. "Walk-in refrigerator and freezer" means a refrigerated space that can be walked into and has a total chilled and frozen storage area of less than 3,000 square feet, operates at chilled (above 32 degrees Fahrenheit) or frozen (at or below 32 degrees Fahrenheit) temperature, and is connected to a self-contained or remote condensing unit. This term excludes products designed and marketed exclusively for medical, scientific, or research purposes. This term also excludes refrigerated warehouses.

XVII. "Water dispenser" means a factory-made assembly that mechanically cools and heats potable water and that dispenses the cooled or heated water by integral or remote means.

339-G:2 Applicability.

I. The provisions of this chapter apply to the testing, certification, and enforcement of efficiency standards for the following types of new products sold, offered for sale, or installed in the state:

- (a) Bottle-type water dispensers;
- (b) Commercial hot food holding cabinets;
- (c) Metal halide lamp fixtures;
- (d) Residential furnaces and residential boilers;
- (e) Single-voltage external AC to DC power supplies;
- (f) State-regulated incandescent reflector lamps;
- (g) Walk-in refrigerators and freezers; and

II. The provisions of this chapter do not apply to:

- (a) New products manufactured in the state and sold outside the state;
- (b) New products manufactured outside the state and sold at wholesale inside the state for final retail sale and installation outside the state;
- (c) Products installed in mobile manufactured homes at the time of construction;
- (d) Products designed expressly for installation and use in recreational vehicles; or
- (e) Residential furnaces that use natural gas or propane and that are installed as replacements for previously installed furnaces.

339-G:3 Minimum Energy Efficiency Standards.

I. Bottle-type water dispensers designed for dispensing both hot and cold water shall not have standby energy consumption greater than 1.2 kilowatt hours per day, as measured in accordance with the test criteria contained in Version 1.1 of the United States Environmental Protection Agency's "ENERGY STAR Program Requirements for Bottled Water Coolers," except that units with an integral, automatic timer shall not be tested using Section D, "Timer Usage," of the test criteria.

II. Commercial hot food holding cabinets shall have a maximum idle energy rate of 40 watts per cubic foot of interior volume, as determined by the "idle energy rate-dry test" in ASTM F2140-01, "Standard Test Method for Performance of Hot Food Holding Cabinets" published by ASTM International. Interior volume shall be measured in accordance with the method shown in the United States Environmental Protection Agency's "ENERGY STAR Program Requirements for Commercial Hot Food Holding Cabinets" as in effect on August 15, 2003.

III. Metal halide lamp fixtures designed to be operated with lamps rated greater than or equal to 150 watts but less than or equal to 500 watts shall not contain a probe-start metal halide ballast.

IV.(a) Residential furnaces and residential boilers shall comply with the following Annual Fuel Utilization Efficiency (AFUE), electricity ratio, and design requirements:

Product Type	Minimum AFUE	Maximum electricity Ratio	Design Requirements
Natural gas- and propane-fired furnaces	90 percent	2.0 percent	none
Oil-fired furnaces \geq 94,000 BTU/hour in capacity	none	2.0 percent	none
Oil-fired furnaces < 94,000 BTU/hour in capacity	none	2.3 percent	none
Natural gas- and propane-fired hot water residential boilers	82 percent	Not applicable	No standing pilot Temperature reset required
Natural gas- and propane-fired steam residential boilers	80 percent	Not applicable	No standing pilot
Oil-fired hot water residential boilers	84 percent	Not applicable	Temperature reset required
Oil-fired steam residential boilers	82 percent	Not applicable	none

Residential boilers shall only be operable if the temperature reset is installed. AFUE shall be measured in accordance with the federal test method for measuring the energy consumption of furnaces and boilers contained in Appendix N to subpart B of part 430, title 10, Code of Federal Regulations.

(b) The commission may adopt rules to exempt compliance with the residential furnace or residential boiler AFUE standards at any building, site or location where complying with the standards would be in conflict with any local zoning ordinance, building or plumbing code, or other rule regarding installation and venting of residential furnaces or residential boilers.

V.(a) Single-voltage external AC to DC power supplies shall meet the energy efficiency requirements in the following table:

Nameplate Output Power	Minimum Efficiency in Active Mode
0 to < 1 watt	0.49 * Nameplate Output
>1 watt and <49 watts	$0.09 * \ln(\text{Nameplate Output Power}) + 0.49$
> 49 watts	0.84

Maximum Energy Consumption in No-Load Mode	
0 to < 10 watts	0.5 watts
≥ 10 watts and ≤ 250 watts	0.75 watts

Where Ln (Nameplate Output) = Natural Logarithm of the nameplate output expressed in watts.

(b) This standard applies to single-voltage AC to DC power supplies that are sold individually and to those that are sold as a component of or in conjunction with another product.

(c) Single-voltage external AC to DC power supplies that require United States Food and Drug Administration listing and approval as a medical device are exempt from the requirements of this section.

(d) Single-voltage external AC to DC power supplies made available by a manufacturer directly to a consumer or to a service or repair facility after and separate from the original sale of the product requiring the power supply as a service part or spare part shall not be required to meet the standards of this section before January 1, 2013.

(e) For purposes of this paragraph, the efficiency of single-voltage external AC to DC power supplies shall be measured in accordance with the test methodology specified in Appendix N to subpart B of part 430, title 10, Code of Federal Regulations.

VI. State-regulated incandescent reflector lamps shall meet the minimum average lamp efficacy requirements for federally-regulated incandescent reflector lamps contained in 42 U.S.C. section 6295 (i)(1)(A). The following types of incandescent reflector lamps are exempt from these requirements:

(a) Lamps rated at 50 watts or less of the following types: BR30, ER30, BR40, and ER40;

(b) Lamps rated at 65 watts of the following types: BR30, BR40, and ER40; and

(c) R20 lamps of 45 watts or less.

VII. Walk-in refrigerators and freezers shall meet the following requirements:

(a) All walk-in refrigerators and freezers shall have:

(1) Automatic door closers that firmly close all reach-in doors and that firmly close walk-in doors no wider than 3 feet 9 inches and no higher than 6 feet 11 inches that have been closed to within one inch of full closure.

(2) Wall, ceiling and door insulation of at least R-28 for refrigerators. Door insulation requirements do not apply to glazed portions of doors, nor to structural members.

(3) Wall, ceiling, and door insulation of at least R-32 for freezers. Door insulation requirements do not apply to glazed portions of doors, or to structural members.

(4) Floor insulation of at least R-28 for freezers.

(5) For single-phase evaporator fan motors of under one horsepower and less than 460 volts, electronically commutated motors. The commission may delay implementation of this subparagraph upon a determination that such motors are only available from one manufacturer or in insufficient quantities to serve the needs of the walk-in refrigerator and freezer industry for evaporator-fan applications.

(6) For condenser fan motors of under one horsepower, either: (a) electronically commutated motors, (b) permanent split capacitor-type motors, or (c) polyphase motors of 1/2 horsepower or more; and

(7) For all interior lights, light sources with an efficacy of 40 lumens per watt or more, including ballast losses, if any. Light sources

with an efficacy of 40 lumens per watt or less, including ballast losses, if any, may be used in conjunction with a timer or device that turns off the lights within 15 minutes of when the walk-in is not occupied.

(b) In addition to the requirements in subparagraph (a), walk-in refrigerators and freezers with transparent reach-in doors shall meet the following requirements:

(1) Transparent reach-in doors and windows in walk-in doors for walk-in freezers shall be of triple-pane glass with either heat-reflective treated glass or gas fill;

(2) Transparent reach-in doors and windows in walk-in doors for walk-in refrigerators shall be either (a) double-pane glass with heat-reflective treated glass and gas fill or (b) triple pane glass with either heat-reflective treated glass or gas fill;

(3) If the appliance has an anti-sweat heater without anti-sweat heat controls, then: the appliance shall have a total door rail, glass, and frame heater power draw of no more than 7.1 watts per square foot of door opening for freezers and 3.0 watts per square foot of door opening for refrigerators; and

(4) If the appliance has an anti-sweat heater with anti-sweat heat controls, and the total door rail, glass, and frame heater power draw is more than 7.1 watts per square foot of door opening for freezers and 3.0 watts per square foot of door opening for refrigerators, then the anti-sweat heat controls shall reduce the energy use of the anti-sweat heater in an amount corresponding to the relative humidity in the air outside the door or to the condensation on the inner glass pane.

339-G:4 Sale and Installation of Products.

I. After December 31, 2008, no new bottle-type water dispenser, commercial hot food holding cabinet, metal halide lamp fixture, state-regulated incandescent reflector lamp, or walk-in refrigerator or walk-in freezer shall be sold or offered for sale in the state unless the efficiency of the new product meets or exceeds the efficiency standards in RSA 339-G:3. After December 31, 2009 no new bottle-type water dispenser, commercial hot food holding cabinet, metal halide lamp fixture, state-regulated incandescent reflector lamp, or walk-in refrigerator or walk-in freezer shall be installed in the state unless the energy efficiency of the new product meets or exceeds the efficiency standards in RSA 339-G:3.

II. No single-voltage external AC to DC power supply manufactured after December 31, 2008 shall be sold or offered for sale in the state unless the efficiency of the single-voltage external AC to DC power supply meets or exceeds the efficiency standards in RSA 339-G:3. After December 31, 2009, no single-voltage external AC to DC power supply manufactured after December 31, 2008 shall be installed unless the energy efficiency of the new product meets or exceeds the efficiency standards in RSA 339-G:3.

III. Within 6 months after the effective date of this section, the commission, in consultation with the attorney general, shall determine if implementation of state standards for residential furnaces and residential boilers requires a waiver from federal preemption. The commission shall make separate determinations for each part of the state standards including minimum Annual Fuel Utilization Efficiency (AFUE), maximum electricity ratio, and any prescriptive requirements. If the commission determines that a waiver from federal preemption is not needed for any part, then after December 31, 2008, or the date which is one year after the date of said determination, if later, no new residential furnace or residential boiler may be sold or offered for sale in the state unless the efficiency of the new product meets or exceeds the applicable

non-preempted part of the efficiency standards in RSA 339-G:3. If the commission determines that a waiver from federal preemption is required for all or part of the state standards, then the commission shall apply for such waiver within one year of such determination and upon approval of such waiver application, the applicable state standards shall go into effect at the earliest date permitted by federal law. The commission shall certify any determinations and approvals under this paragraph to the secretary of state and the director of the office of legislative services.

339-G:5 Modified and Additional Standards. The commission may establish more stringent efficiency standards for the products listed in RSA 339-G:2, I; provided no more stringent efficiency standards shall become effective within one year following the adoption of any rules providing for the more stringent efficiency standards. Not less than every 2 years, the commission shall propose to the general court new efficiency standards for products not listed in RSA 339-G:2, I. Standards proposed by the commission shall promote energy conservation in the state and be lifecycle cost-effective for consumers who purchase and use the products. The commission may apply for a waiver from preemption in accordance with federal procedures for those products regulated by the federal government. The commission may adopt rules, pursuant to RSA 541-A, necessary to implement the provisions of this section.

339-G:6 Testing. The manufacturers of products listed in RSA 339-G:2, I shall test samples of their products in accordance with the test procedures established in this chapter or those specified in the state building code as defined in RSA 155-A. The commission shall adopt by rule test procedures for determining the energy efficiency of the products listed in RSA 339-G:2, I if such procedures are not provided for in RSA 339-G:3 or in the state building code. The commission shall adopt United States Department of Energy approved test methods, or in the absence of such test methods, other appropriate nationally-recognized test methods. The commission may adopt updated test methods when new versions of test procedures become available.

339-G:7 Certification and Identification.

I. Manufacturers of new products listed in RSA 339-G:2, I, except for single-voltage external AC to DC power supplies, walk-in refrigerators, and walk-in freezers, shall certify to the commission that such products are in compliance with the provisions of this chapter. Such certifications shall be based on test results. The commission shall adopt rules, pursuant to RSA 541-A, governing the certification of such products and may coordinate with the certification programs of other states with similar standards.

II. Manufacturers of new products listed in RSA 339-G:2, I shall identify each product offered for sale or installation in the state as in compliance with the provisions of this chapter by means of a mark, label, or tag on the product and packaging at the time of sale or installation. The commission shall adopt rules, pursuant to RSA 541-A, governing the identification of such products and packaging, which shall be coordinated to the greatest practical extent with the labeling programs of other states and federal agencies with equivalent efficiency standards. The commission shall allow the use of existing marks, labels, or tags which connote compliance with the efficiency requirements of this chapter.

339-G:8 Inspections. With prior notice and at reasonable and convenient hours, the commission may cause periodic inspections to be made of distributors or retailers of new products listed in RSA 339-G:2, I in order to determine compliance with the provisions of this chapter. The com-

mission shall also coordinate with local enforcement agencies regarding inspections prior to occupancy of newly constructed buildings containing new products that are also covered by the state building code.

339-G:9 Enforcement; Penalties. The commission shall cause investigations to be made of complaints received concerning violations of this chapter and shall report the results of such investigations to the attorney general. The attorney general may institute proceedings to enforce the provisions of this chapter. Any manufacturer, distributor, or retailer who violates any provision of this chapter shall be issued a warning by the commission for any first violation. Repeat violations shall be subject to a civil penalty of not more than \$250. Each violation of this chapter shall constitute a separate offense, and each day that such violation continues shall constitute a separate offense.

2 Effective Date. This act shall take effect January 1, 2009.

MOTION TO TABLE

Sen. Fuller Clark moved to have SB 259 laid on the table.

Motion adopted.

LAI D ON THE TABLE

SB 259, establishing state appliance and equipment energy efficiency standards.

SB 205-FN, eliminating an exception to state reimbursement for drug testing for racing dogs and horses. Executive Departments and Administration Committee. Inexpedient to Legislate, Vote 3-2. Senator Burling for the committee.

SENATOR BURLING: Thank you, Madam President. I move the bill inexpedient to legislate. This bill has to do with waiving certain fees and items relative to the state drug testing lab. We did a lot of work last year which dramatically affected the lab and the whole business of doing these tests. Just to refresh the memory of the Senators, the issue before us last year was that there was a mandate that certain drug tests on racing dogs and horses be performed at the state lab. The complaint that we were hearing was that the state lab, because of problems of efficiency and the number – a small number of tests that needed to be performed, was charging in excess of 200 percent of what private labs might charge for the same test. There was a great deal of back-and-forth in Committee and on the floor of this senate about whether we should allow private labs to perform these tests. And ultimately we decided to allow that transition to take place. The testing is now being done by private labs. We understand it's being done for considerably less than the state lab was able to do them for. That being the case, the mandate which sends all of these tests to the state lab is gone. And, therefore, passage of this bill would achieve nothing. That is why the majority of the Committee, 3-2, voted inexpedient to legislate. The testing that underlay this whole discussion is now in the hands of private labs around New England. Thank you, Madam President.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on SB 205-FN.

Motion of Inexpedient to Legislate adopted.

SB 210-FN, relative to transferring regulation of fuel gas fitters to the board of licensing and regulation of plumbers, and making certain changes to the regulation of plumbers. Executive Departments and Administration Committee. Ought to Pass with Amendment, Vote 4-0. Senator Cilley for the committee.

Senate Executive Departments and Administration
November 29, 2007
2007-2669s
10/05

Amendment to SB 210-FN

Amend the title of the bill by replacing it with the following:

AN ACT relative to making various changes to the regulation of plumbers and water treatment technicians by the board of licensing and regulation of plumbers.

Amend the bill by replacing all after the enacting clause with the following:

1 Purpose. RSA 329-A:1 is repealed and reenacted to read as follows:

329-A:1 Purpose. The purpose of this chapter is to protect and improve the general health and welfare of the people of the state of New Hampshire in the fields of environmental sanitation and building safety by authorizing the licensing and regulation of plumbers and the voluntary certification of water treatment technicians.

2 Definitions. RSA 329-A:2, I – IV are repealed and reenacted to read as follows:

I. “Master plumber” means any individual licensed under this chapter, and any corporation, partnership or limited liability company licensed under this chapter that, as a business, employs one or more individuals to do plumbing work, or, without hiring anyone, does that work as a principal business or as an auxiliary to a principal business.

II. “Journeyman plumber” means any individual licensed under this chapter to perform plumbing work under the direction of a master plumber.

III. “Apprentice” means any individual who is engaged in learning and assisting in the practice of plumbing under the supervision of a licensed journeyman plumber or licensed master plumber as part of an apprenticeship program that meets the requirements of the Office of Apprenticeship of the United States Department of Labor.

IV. “Plumbing” means the work or practice of installation, removal, repair, replacement, extension, or alteration of a plumbing system, and the materials and fixtures used in the work or practice.

3 New Paragraph; Definition; Plumbing System. Amend RSA 329-A:2 by inserting after paragraph IV the following new paragraph:

IV-a. “Plumbing system” means all piping, fixtures, fixed appliances and appurtenances, and connections required for the following: sanitary drainage and storm drainage of a building to a minimum of 30 inches beyond the foundation wall or the building’s outside dimension; special wastes systems; venting systems; and water distribution systems including backflow prevention devices, and any necessary interconnections of piping between buildings or structures.

4 Definition; Water Treatment Technician. RSA 329-A:2, VII is repealed and reenacted to read as follows:

VII. “Water treatment technician” means any individual who installs, maintains, or repairs water treatment systems and any corporation, partnership, or limited liability company that, as a business, employs one or more individuals to install, maintain, or repair water treatment systems, or, without hiring anyone, does that work as a principal business or as an auxiliary to a principal business.

5 Board; Public Member; Duty. RSA 329-A:3, II is repealed and reenacted to read as follows:

II. A public member of the board shall be a person who is not, and never was, a member of the plumbing or water treatment trades or the spouse of such person; who does not have, and never has had, a material financial interest in the provision of plumbing or water treatment services; and does not have, and has not for 5 years preceding appointment had, a material financial interest in an activity directly related to plumbing or water treatment, including the representation for a fee of the board or the plumbing or water treatment trades.

II-a. The board shall be responsible for the regulation of plumbing and plumbers, and for the voluntary certification of water treatment technicians and their regulation.

6 Compensation of Board. Amend RSA 329-A:4 to read as follows:

329-A:4 Compensation and Expenses. Members of the board shall each be allowed the sum of [~~\$30~~] **\$50** per day and their necessary traveling expenses incurred in carrying out their official duties.

7 Meetings; Quorum. Amend RSA 329-A:5 to read as follows:

329-A:5 Organization and Meetings. The board shall hold at least 4 regular meetings each year, and special meetings may be held at such times as the business of the board may require. Notice of all meetings shall be given in such manner as ***RSA 91-A:2, II and*** the rules of the board may provide. The board shall annually elect a chairman and a vice-chairman from among its members. A quorum of the board shall consist of not [~~less~~] ***fewer*** than 3 members, at least one of whom shall be a public member.

8 Fees. Amend RSA 329-A:5-a to read as follows:

329-A:5-a Fees. The board shall establish fees for ***processing applications; for*** licensure, renewal of licensure, ***reinstatement of licensure***, and late renewal of licensure to practice under this chapter[;]; for certification, renewal of certification, ***reinstatement of certification***, and late renewal of certification under this chapter[;]; for initial apprentice identification cards and renewal of apprentice identification cards[;]; for inspections done pursuant to RSA 329-A:17[~~, for copies of the state plumbing code,~~]; for letters of verification requested by other jurisdictions relating to licensure and certification[;]; for any courses, workshops, and seminars offered by the board[;]; and for transcribing and transferring records and other services. The fees established by the board shall be sufficient to produce estimated revenues equal to 125 percent of the direct operating expenses of the board for the previous fiscal year. The fee for the annual renewal of certification issued to persons certified as water treatment technicians shall not be more than the fee for the annual renewal of licenses issued to journeyman plumbers.

9 Receipts. Amend RSA 329-A:6 to read as follows:

329-A:6 Receipts and Disbursements. The secretary of the board shall receive and account at least monthly for all moneys derived [~~under~~] ***from*** the provisions of this chapter, and shall pay the same to the state treasurer. The board may employ such clerical or other assistants as are necessary for the proper performance of its work, and may make expenditures from this fund for any purpose which, in the opinion of the board, is reasonably necessary for the proper performance of its duties under this chapter. Under no circumstances shall the total amount of payments made hereunder exceed the amount of the fees collected hereunder. Any balance in said account shall lapse at the end of each fiscal year.

10 Examinations. Amend RSA 329-A:7 to read as follows:

329-A:7 Examinations; Licenses and Certificates. The board shall establish through rulemaking, pursuant to RSA 541-A, the nature of proc-tored examinations required for ***the*** issuance ***to individuals*** of master

plumber licenses, journeyman plumber licenses, and certifications as a water treatment technician~~[, respectively]~~. The scope of such examinations and the methods of procedure shall be prescribed by the board, provided that the scope of examination of water treatment technicians shall be limited to the configuration and installation of water treatment systems ~~[and]~~, the provisions of this chapter, and the rules adopted by the board ~~[that relate]~~ **relating** to water treatment systems. ***Any individual refused a license or certificate on the basis of his or her examination score may be reexamined as often as the individual desires.***

11 Licenses; Master Plumbers; Business Entities. RSA 329-A:8 and 9 are repealed and reenacted to read as follows:

329-A:8 Licenses; Master Plumbers; Business Entities.

I. Any individual who, having held a journeyman plumber's license for at least 12 months, shall, upon the payment of the application processing fee established by the board, be entitled to an examination. If he or she passes the examination, pays the license fee and is found qualified by the board, he or she shall be licensed as a master plumber. The license issued shall be carried on the individual while working and displayed upon request.

II. Upon the payment of the required application processing and license fees the board may issue a master plumber license without examination to a corporation, partnership, or limited liability company engaged in the business of plumbing, provided one or more officers of the corporation, one or more members of the partnership, or one or more managing members of the limited liability company, as applicable, holds a master plumber license issued under this chapter. The business entity shall designate a corporate officer, partner or managing member who is a licensed master plumber to be responsible for its compliance with this chapter and the rules adopted by the board. Within 30 days after the death of the designated person or the withdrawal of the designated person as a principal of the business, the designated person or the business entity itself shall give notice thereof to the board and a new principal shall be designated to be responsible for the business entity's compliance with this chapter and the rules adopted by the board. If no such designation is made, the business entity shall not engage in plumbing until some other corporate officer, partner, or managing member licensed as a master plumber has been designated as responsible for the business entity's compliance. A license issued under this section shall be publicly displayed at the licensee's principal place of business.

329-A:9 Licenses; Journeyman Plumbers. Any individual who, having successfully completed his or her apprenticeship in plumbing, has received an official completion certificate from the organization conducting the program shall, upon payment of the application processing fee established by the board, be entitled to examination. If he or she passes the examination, pays the license fee and is found qualified by the board, he or she shall be licensed as a journeyman plumber. The license issued shall be carried on the individual while working and displayed upon request.

12 Voluntary Certification of Water Treatment Technicians. RSA 329-A:9-a is repealed and reenacted to read as follows:

329-A:9-a Voluntary Certification of Water Treatment Technicians.

I. Any individual who has acted as a water treatment trainee for a period of not less than one year shall, upon payment of the application processing fee established by the board, be entitled to examination and, upon achieving the passing score on the examination and paying

the certification fee, be certified as a water treatment technician. A certificate issued under this section shall be carried on the person and displayed upon request.

II. The title "certified water treatment technician" shall be used only by individuals and business entities certified under this chapter. No individual shall continue to represent himself or herself and no business entity shall continue to represent itself as a certified water treatment technician after certification has been revoked or non-renewed under this chapter.

III. The board may issue, upon payment of the required application processing and certification fees, certification without examination to a corporation, partnership or limited liability company that installs, maintains, or repairs water treatment systems, provided that one or more officers of the corporation, one or more members of the partnership or one or more managing members of the limited liability company, as applicable, holds a water treatment certificate issued under this chapter. The business entity shall designate a corporate officer, partner or managing member who is a certified water treatment technician to be responsible for its compliance with this chapter and the rules adopted by the board. Within 30 days after the death of the designated person or the designated person's withdrawal as a principal of the business, the designated person or the business entity itself shall give notice thereof to the board and a new principal shall be designated to be responsible for the business entity's compliance with this chapter and the rules adopted by the board. If no such designation is made, the business entity shall not engage in water treatment until some other corporate officer, partner, or managing member certified as a water treatment technician has been designated as responsible for the business entity's compliance. A certification issued under this section shall be publicly displayed at the principal location of the business.

IV. The board may issue certification without examination to those water treatment technicians who provide adequate documentation of having operated in the capacity of a water treatment technician for a period of at least one year prior to January 1, 2006 and who pay the required fees.

13 Apprentice Plumbers. RSA 329-A:9-b is repealed and reenacted to read as follows:

329-A:9-b Apprentice Plumbers. Apprentice plumbers shall register with the board and, upon payment of the registration fee established by the board, be issued an identification card. Apprentice identification cards shall expire each year on the last day of the month of the apprentice's birth. The board shall renew the identification cards of apprentice plumbers if they pay the renewal fee and continue to be engaged in learning and assisting in the practice of plumbing under an apprenticeship program that meets the requirements of the state apprenticeship council.

14 Renewal. Amend RSA 329-A:11 to read as follows:

329-A:11 Expiration and Renewal.

I. Licenses and certificates issued by the board shall expire each year on the last day of the month of the holder's birth.

II. Licenses issued to corporations, partnerships, and limited liability companies shall expire on the last day of January of each year.

II-a. To be eligible for renewal, each individual licensee and certificate holder shall maintain his or her competence through continuing education offered or approved by the board.

III. The board shall renew the licenses and certificates of eligible applicants upon the payment of the required fee and documentation of having met continuing education requirements and any other eligibility requirements established by the board pursuant to RSA 541-A.

IV. The board is authorized to offer continuing education courses, workshops, and seminars, ***and to approve providers of continuing education pursuant to standards set forth in rules adopted by the board in accordance with RSA 541-A.***

15 New Section; Inactive Status; Military Service. Amend RSA 329-A by inserting after section 11 the following new section:

329-A:11-a Inactive Status During Active Military Service.

I. Upon the request of a person licensed or certified by the board who is called to active military service for the United States, the board shall place such person's license or certificate on inactive status. The inactive status shall continue until the person is discharged from active military duty.

II. If the holder of a license or certificate inactivated under this provision wishes reactivation of the license or certificate, she or he shall so notify the board. Upon such notification the board shall extend the period for renewal of the license or certificate, and for meeting the eligibility standards for renewal, by the length of time that the license or certificate was inactive.

16 Disciplinary Action. RSA 329-A:12 is repealed and reenacted to read as follows:

329-A:12 Disciplinary Action.

I. The board may undertake disciplinary proceedings:

(a) Upon its own initiative; or

(b) Upon written complaint of any person which charges that a person licensed or certified by the board has committed misconduct under paragraph II and which specifies the grounds therefor.

II. Misconduct sufficient to support disciplinary proceedings shall include:

(a) The practice of fraud or deceit in procuring, or attempting to procure, a license or certificate to practice under this chapter;

(b) Conviction during the period of licensure or certification of a felony or any criminal offense involving injury to a victim or the risk of such injury, or any criminal offense involving dishonesty;

(c) Suspension or revocation of a license or certification, similar to one issued under this chapter, issued by another jurisdiction, without reinstatement of such license or certification;

(d) Negligent or willful acts performed in a manner inconsistent with the health or safety of persons;

(e) Violation of ethical standards adopted by the board;

(f) Addiction to the use of alcohol or other habit-forming drugs to a degree which renders the licensee or certificate holder unfit to practice;

(g) Mental or physical incompetence to practice as a plumber or water treatment technician;

(h) Willful or repeated violation of the provisions of this chapter; or

(i) A violation of the state plumbing code.

III. The board may take disciplinary action in any one or more of the following ways:

(a) By private reprimand;

(b) By suspension, limitation or restriction of license or certification for a period of up to 5 years;

(c) By revocation of license or certification;

(d) By requiring the licensee or certificate holder to participate in a program of continuing education or personal training in the area or areas in which he or she has been found deficient;

(e) By the imposition of an administrative fine not to exceed \$1,000 for each instance of misconduct by a licensed plumber or certified water treatment technician;

(f) By the imposition of an administrative fine not to exceed \$1,000 for performing plumbing after the expiration date of the plumbing license;

(g) By the imposition of an administrative fine not to exceed \$1,000 for a violation of the terms of the board's suspension of a license or certificate, or for a violation of limitations or restrictions previously placed by the board upon a license or certificate;

(h) By the imposition of an administrative fine for continuation of any misconduct described in subparagraphs (d) through (i) in the amount of \$100 for each day the misconduct continues after notice from the board that the misconduct shall cease; and

(i) By denial of an application for renewal or reinstatement of a license or certificate.

IV. Upon the issuance of an administrative fine, the board may suspend the license or certificate until the fine has been paid.

17 Exceptions. Amend RSA 329-A:13, IV to read as follows:

IV. To persons ~~engaged in the installation of any heating, cooling, air conditioning or domestic water heating systems, whether solar, oil, gas, or electric, and persons engaged in the installation and servicing of water treatment systems or swimming pools.~~ ***performing only essential plumbing work necessary for the installation of any heating system, cooling system, water heater, air conditioning system, or essential plumbing work necessary for installation of swimming pools.***

IV-a. To persons not certified under this chapter who are engaged in the installation and servicing of water treatment systems.

18 Rulemaking. RSA 329-A:14 is repealed and reenacted to read as follows:

329-A:14 Rulemaking Authority.

I. The board shall adopt rules pursuant to RSA 541-A relative to:

(a) Applications for licensure and certification, renewal licensure and certification, and reinstatement of licensure and certification.

(b) Any eligibility requirements in addition to those in this chapter for an initial license to practice plumbing, for plumbing license renewal and for plumbing license reinstatement.

(c) The application procedure and any eligibility requirements in addition to those in this chapter for certification as a certified water treatment technician, for renewal of certification and for reinstatement of certification.

(d) The establishment of all fees authorized by this chapter.

(e) The allocation of disciplinary sanctions in cases of misconduct by holders of licenses and certificates.

(f) Apprentice registration and renewed apprentice registration.

(g) Standards for continuing education required for license and certification renewal.

(h) Procedures for the conduct of hearings consistent with the requirements of due process.

II. The board may adopt rules pursuant to RSA 541-A relative to:

(a) Any continuing education requirements for reinstatement of licenses and certificates.

(b) Standards to be met by providers of continuing education.

(c) Ethical standards to be met by each holder of a license or certificate.

(d) Procedures for the voluntary surrender of licenses and certificates issued by the board.

(e) Procedures for placing the licenses and certificates of those on active military duty on inactive status and reactivating such licenses and certificates.

18 Enforcement. Amend RSA 329-A:16 to read as follows:

329-A:16 Enforcement.

I. The state plumbing code shall be enforced by the building inspection department or by any officer designated by the administrative authority of the city or town; provided, however, that a city or town may adopt and enforce rules more stringent than the state plumbing code. In the absence of a building inspection department or officer designated to enforce the state plumbing code, the board shall have the authority to enforce the state plumbing code.

II. The board shall refer all allegations of violations [~~specified in RSA 329-A:18~~] **of the state plumbing code** to the New Hampshire attorney general and to the county attorney in the appropriate county. The county attorney shall investigate such allegations and take appropriate action if the attorney general does not do so.

III. The board is authorized to sanction with a civil fine not to exceed \$1,000, and to issue a cease and desist order against, any individual or business entity violating the state plumbing code.

IV. The board is authorized to sanction with a civil fine not to exceed \$1,000, and to issue a cease and desist order against, any individual not an apprentice plumber who is engaged in plumbing without a currently valid license. The board is authorized to sanction with a civil fine not to exceed \$1,000, and to issue a cease and desist order against, any business entity engaged in plumbing without a currently valid license. Cease and desist orders issued by the board shall be enforceable in superior court.

19 Inspectors. Amend RSA 329-A:17 to read as follows:

329-A:17 Inspectors.

I. The board shall have the authority to appoint such inspectors as are necessary to insure compliance throughout the state with [~~plumbing practices consistent with the public safety and welfare~~] **the state plumbing code and this chapter.**

II. An inspector appointed under this section shall have the authority to enter any premises in which [~~a~~] plumbing [~~installation subject to regulation under this chapter~~] **or water treatment** is being [~~installed, replaced or repaired~~] **performed** for the purpose of making such inspection as is necessary to carry out his **or her** duties under this section.

III. Any inspector may order the removal or correction of any violation of **the plumbing code or** this chapter, and may order any public utility furnishing water to [~~such installation~~] **the site of violation** to discontinue such service until the violations are corrected.

IV. Whenever an inspector orders the removal or correction of a violation under paragraph III, he or she shall immediately notify the local building inspection department or administrative authority of the town where the violation is located, and further order that [~~all~~] the [~~work in~~] violation be corrected prior to continuance **of the plumbing or water treatment work.** The local building authority shall approve the continuation of work [~~on the installation~~] upon being satisfied that violations have been corrected and shall notify the inspector of such approval. **If there is no local building authority, the board's inspector shall approve the continuation of work after violations have been corrected.**

20 Penalties. RSA 329-A:18 is repealed and reenacted to read as follows:

329-A:18 Penalties.

I. Any business entity or individual who procures a plumbing license or water treatment certificate wrongfully or by fraud is guilty of a misdemeanor.

II. Any business entity which performs plumbing without a currently valid plumbing license, and any individual who is not an apprentice and performs plumbing without a currently valid license, is guilty of a misdemeanor, unless the business entity or individual has a license which has been expired for no more than 12 months, in which case such business entity or individual is guilty of a violation.

III. Any business entity or individual employing an individual to perform plumbing when the employee is not an apprentice and does not have a currently valid plumbing license is guilty of a misdemeanor, unless the employee has a license which has been expired for no more than 12 months, in which case the employer is guilty of a violation.

IV. Any business entity not licensed as a plumbing business or certified as a water treatment technician which represents itself as so licensed or certified, and any individual not licensed as a plumber or not certified as a water treatment technician who represents himself or herself as so licensed or certified, is guilty of a misdemeanor.

V. Any person who does any plumbing work in violation of the state plumbing code, or causes any violation of the state plumbing code, shall be guilty of a misdemeanor.

21 Repeal. RSA 329-A:10, relative to licenses without examination, is repealed.

22 Effective Date. This act shall take effect January 1, 2009.

2007-2669s

AMENDED ANALYSIS

The bill makes various changes to the regulation of plumbers and certified water treatment technicians by the state board for the licensing and regulation of plumbers.

SENATOR CILLEY: Thank you, Madam President. I move that SB 210-FN ought to pass with amendment. One of the key provisions of this bill was removed. The regulation of the gas fitters that's referenced in the title, they remain under the Marshal's office, the Fire Marshal's office. The bill makes various changes to the regulation of plumbers and water treatment technicians by the Board of Licensing and Regulation of Plumbers. Many of us heard public testimony, read many e-mails and correspondence from those around the state on SB 210. The Committee and public interests have come together as one to pass a hardworking piece of legislation. The purpose of SB 210 is to protect and improve the general health and welfare of the people of New Hampshire, in the fields of environmental sanitation and building safety, by authorizing the licensing and regulation of plumbers and the voluntary certification of water treatment technicians. These are highlighted with their definitions and responsibilities in the amendment, 2669s. A board will be established, meeting four times a year, being responsible for the regulation of plumbing and plumbers, and for the voluntary certification of water treatment technicians and their regulations. The board will establish fees for processing applications for licensure, renewal of licensure and reinstatement of licensure. Examinations and licenses and certificates shall be established through rulemaking. Pursuant to RSA 541-A, the nature of proctored examinations

are required for the issuance to individuals to master plumbers, journeyman plumbers and water treatment licenses. Licenses and certifications issued by the board shall expire each year on the last day of the month of the holder's birth. To be eligible for renewal, each individual licensee and certificate holder shall maintain his or her competence through continuing education. In addition, a new section to this bill was upon request of persons licensed or certified by the board who is called to active military service for the United States, the board shall place such person's license or certificate on inactive status. There were many key players involved in this bill, and we all reached an agreement to pass this bill. We ask your support of SB 210. Thank you.

The question is on the adoption of Committee Amendment 2669s. Committee Amendment 2669s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 210-FN.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

Sen. Kenney is in opposition to SB 210-FN.

SB 212-FN, relative to the regulation of home inspectors. Executive Departments and Administration Committee. Ought to Pass with Amendment, Vote 4-0. Senator Cilley for the committee.

Senate Executive Departments and Administration

November 30, 2007

2007-2670s

10/04

Amendment to SB 212-FN

Amend the bill by replacing all after the enacting clause with the following:

1 New Subdivision; Home Inspectors. Amend RSA 310-A by inserting after section 181 the following new subdivision:

Home Inspectors

310-A:182 Purpose. The purpose of this subdivision is to assure that a home inspector performs professional services only when the home inspector is qualified by education and training in the specific technical areas involved.

310-A:183 Definitions. In this subdivision:

I. "Auxiliary services" means any fee paid services provided by the home inspector to the client in addition to a home inspection.

II. "Board" means the board of home inspectors.

III. "Client" means an individual who signs a home inspection agreement in order to have a home inspection performed.

IV. "Code of ethics" means the code of ethics followed by home inspectors who are licensed as home inspectors by the board.

V. "Home inspection" means the process by which a home inspector visually examines the readily accessible systems and components of a home and which describes those systems and components in accordance with the board approved standards of practice and code of ethics.

VI. "Home inspector" means a person who, by reason of professional education or practical experience, or both, is qualified to engage in the practice of home inspections as attested by licensing as a home inspector.

310-A:184 Standards Of Practice. The board shall adopt, under RSA 541-A, minimum and uniform standards of practice which shall apply to New Hampshire home inspectors and be enforced by the board.

310-A:185 Code of Ethics for New Hampshire Home Inspectors.

I. The code of ethics details the core guidelines of home inspection professionalism and home inspection ethics, covering crucial issues such as conflicts of interest, good faith and public perception. Integrity, honesty, and objectivity are fundamental principles embodied by this code, which sets forth obligations of ethical conduct for the home inspection profession.

II. Inspectors shall comply with this code, avoid association with any enterprise whose practices violate this code, and strive to uphold, maintain, and improve the integrity, reputation, and practice of the home inspection profession.

III. Inspectors shall avoid conflicts of interest or activities that compromise, or appear to compromise, professional independence, objectivity, or inspection integrity. Inspectors shall not:

(a) Inspect properties for compensation in which they have, or expect to have, a financial interest.

(b) Inspect properties under contingent arrangements whereby any compensation or future referrals are dependent on reported findings or on the sale of a property.

(c) Directly or indirectly compensate realty agents, or other parties having a financial interest in closing or settlement of real estate transactions, for the referral of inspections or for inclusion on a list of recommended inspectors, preferred providers, or similar arrangements.

(d) Receive compensation for an inspection from more than one party unless agreed to by the client.

(e) Accept compensation, directly or indirectly, for recommending contractors, services, or products to inspection clients or other parties having an interest in inspected properties.

(f) Repair, replace, or upgrade, for compensation, systems or components covered by the standards of practice, for one year after the inspection.

IV. Inspectors shall act in good faith toward each client and other interested parties.

(a) Inspectors shall perform services and express opinions based on genuine conviction and only within their areas of education, training, or experience.

(b) Inspectors shall be objective in their reporting and not knowingly understate or overstate the significance of reported conditions.

(c) Inspectors shall not disclose inspection results or client information without client approval. Inspectors, at their discretion, may disclose observed immediate safety hazards to occupants exposed to such hazards, when feasible.

V. Inspectors shall avoid activities that may harm the public, discredit themselves, or reduce public confidence in the profession.

(a) Advertising, marketing, and promotion of inspectors' services or qualifications shall not be fraudulent, false, deceptive, or misleading.

(b) Inspectors shall report substantive and willful violations of this code to the board.

310-A:186 Board of Home Inspectors.

I. A board of home inspectors is established to administer the provisions of this subdivision. The board shall consist of 7 persons as follows:

(a) Five members shall be home inspectors, one from each executive council district, nominated by the respective executive councilors, and appointed by the governor and council.

(b) Two shall be public members, each to be appointed by the governor and council. Each public member of the board shall be a person who is not, and never was, a home inspector or the spouse of any such person, and who does not have, and never has had, a material financial interest in either the provision of home inspector services or an activity directly related to the home inspection trade, including the representation of the board or trade for a fee at any time during the 5 years preceding appointment.

II. Each member of the board shall be a citizen of the United States and a resident of this state. Each home inspector board member shall have actively practiced home inspections for his or her means of livelihood during or, if retired, prior to, his or her appointment.

III. Members shall be appointed for 2-year terms. Appointments for terms of less than 2 years may be made in order to stagger the appointments. No appointed member shall be eligible to serve more than 2 full consecutive terms, provided that for this purpose only a period actually served which exceeds $\frac{1}{2}$ of the 2-year term shall be deemed a full term. Upon expiration of a member's term, the member shall serve until a successor is qualified and appointed. Vacancies occurring prior to the expiration of a specific term shall be filled by appointment for the unexpired term. A board member may be removed for cause by the governor and council under RSA 4:1.

IV. Members of the board shall receive \$25 for each day actually engaged in the duties of their office and shall be reimbursed for all actual travel, incidental, and clerical expenses necessarily incurred in carrying out the provisions of this subdivision.

V. The board shall hold at least 3 regular meetings each year and special meetings at such times as it may deem necessary. Notice of all meetings shall be given in such a manner as rules adopted by the board may provide. The board shall biennially elect or appoint a chairperson, vice-chairperson, and secretary. Four members shall constitute a quorum.

VI.(a) The board shall keep a record of its proceedings and a register of all applications for licensure, which shall show:

(1) The name, age, and residence of each applicant.

(2) The date of application.

(3) The place of business of such applicant.

(4) The applicant's educational and other qualifications.

(5) Proof of passing home inspection exam.

(6) Whether the applicant was rejected and the reasons for such rejection.

(7) Whether a license was granted.

(8) The date of the action of the board.

(9) Such other information as may be deemed necessary by the board.

(b) The records of the board shall be prima facie evidence of the proceedings of the board, and a transcript of such records certified by the secretary of the board under seal shall be admissible in evidence with the same force and effect as if the original were produced. Biennially, as of December 31, the board shall submit to the governor a report of the transactions of the preceding biennium, and a complete statement of the receipts and expenditures of the board.

VII. The secretary of the board shall publish a roster listing the names and addresses of all home inspectors licensed under this subdivision by the board during February of each even-numbered year. Copies of this

roster shall be sent to each person so licensed, placed on file with the secretary of state, and furnished to the public upon request at a fee to be established by the board. The board may include in such roster any other information it deems appropriate.

VIII. The board, its members, and its agents shall be immune from personal liability for actions taken in good faith in the discharge of the board's responsibilities, and the state shall hold the board, its members, and its agents harmless from all costs, damages, and attorneys' fees arising from claims and suits against them with respect to matters to which such immunity applies.

310-A:187 Rulemaking Authority.

I. The board shall adopt rules, pursuant to RSA 541-A, relative to:

(a) The application procedure for a license to practice under this subdivision.

(b) The qualifications of applicants in addition to requirements of this subdivision, and including the qualifications for satisfactory evidence of good professional character.

(c) Procedures for auditing applicants and licensees.

(d) How a license to practice under this subdivision shall be renewed or reinstated, including late fees and any requirements for continuing education.

(e) The establishment of all fees required under this subdivision.

(f) Disciplinary actions by the board that shall be implemented for violations of the standards of practice, code of ethics, and rules adopted by the board.

(g) Procedures for the conduct of hearings consistent with the requirements of due process.

(h) Procedures for approving education courses for eligibility for licensure and for a continuing education program

(i) Matters related to the proper administration of this subdivision.

II. The board shall adopt one eligibility examination required for licensure that is compiled from examination materials submitted by the board members.

III. At least 40 days prior to any hearing to be held pursuant to RSA 541-A:11, the board shall furnish a copy of any proposed rules of or amendments thereto, to all affected professionals licensed by the board.

310-A:188 Fees. The board shall adopt rules, under RSA 541-A, which shall establish fees required under this subdivision, which shall be sufficient to produce estimated revenues equal to 125 percent of the direct operating expenses of the board, including the following:

I. Application for licensure.

II. Renewal for licensed home inspectors.

III. Late fees for a late renewal of license.

IV. Replacement of a lost or mutilated license.

V. Transcribing and transferring records and other services.

VI. Reinstatement fees.

VII. Other fees or fines deemed necessary by the board.

310-A:189 License Required. Beginning January 1, 2010, no person shall practice as a home inspector or conduct home inspections in this state without a home inspector's license issued by the board under this subdivision.

310-A:190 Eligibility Requirements For Licensure As A Home Inspector.

I. Each applicant for licensure as a home inspector shall meet the following minimum requirements:

(a) Completion of no less than 80 hours of board-approved education covering all of the following core components of a residential building of 4 units or less:

- (1) Heating system.
- (2) Cooling system.
- (3) Plumbing system.
- (4) Electrical system.
- (5) Structural components.
- (6) Foundation.
- (7) Roof covering.
- (8) Exterior and interior components.
- (9) Site aspects as they affect the building.

(b) Proof of passing the board adopted examination required for licensure.

(c) Have successfully completed high school or its equivalent.

(d) Be at least 18 years of age.

(e) Submit to the board a notarized criminal history records release form as provided by the New Hampshire state police, which authorizes the release of the applicant's criminal records, if any. The applicant shall bear the cost of the criminal records check.

II. The board shall approve all education programs under subparagraph (a) of organizations or education institutions providing acceptable education and training.

III. The board shall have the discretion to reject an applicant who is not of good professional character, as evidenced by:

(a) Conviction for commission of a felony;

(b) Misstatement of facts by the applicant in connection with the application;

(c) Violation of any of the standards of practice or code of ethics as they are set forth in this subdivision or in rules adopted by the board; or

(d) Practicing home inspections without being licensed in violation of laws of the jurisdiction in which the practice took place.

310-A:191 License Applications.

I. Applications for licensure shall be on forms prescribed and furnished by the board.

II. Applicants shall include the following:

(a) Proof of required education.

(b) Proof of passing the eligibility testing requirements.

(d) Payment of applicable fees.

(e) Any other attachments as required by board.

III. If the board denies the issuance of a license to any applicant, any fee paid shall be retained as an application fee.

310-A:192 Continuing Education. Evidence satisfactory to the board of the completion in each 2-year renewal period of a minimum of 20 hours of continuing education shall be required for license renewal, provided that one hour of the 20 required hours shall be from a board approved course on license regulation review. The board shall approve educational courses and activities that would further the professional competence of licensees. The continuing education credits shall be determined on the basis of one credit for each contact hour of course instruction or professional development activity actually attended by a licensee.

310-A:193 Issuance of Licenses. The board shall issue a license upon payment of the license fee established by the board, to any applicant who,

in the opinion of the board, has satisfactorily met all the requirements of this subdivision. Licenses shall show the full name of the licensee, have a serial number, and be signed by the chairperson or the secretary of the board. The issuance of a license by the board shall be prima facie evidence that the person named in the license is entitled to all the rights and privileges of a licensed home inspector while the license remains valid. It shall be a class B misdemeanor for the licensee to perform home inspections after the license of the licensee has expired or has been revoked, unless such license shall have been renewed, reinstated, or reissued.

310-A:194 Reciprocity. If, in the determination of the board, another state grants reciprocity to residents of this state and is deemed to have state licensure requirements equal to or exceeding those of this state, the board may enter into a reciprocity agreement allowing applicants who are licensed under the laws of such other state to obtain a license as a home inspector in this state upon such terms and conditions as may be determined by the board.

310-A:195 Expiration and Renewals.

I. The board shall send by mail or otherwise notification of the impending license expiration to each licensee at least 60 days prior to the expiration of the license, along with a request for payment of a renewal fee. Licensees in good standing may renew their licenses by paying the renewal fee prior to the expiration date of the license, and by presenting evidence satisfactory to the board of completion of the continuing education requirements. If properly renewed, a license shall remain in effect continuously from the date of issuance, unless suspended or revoked by the board for just cause.

II. All licenses issued by the board shall expire after 2 years on the last day of the licensee's birth month. Such license may be renewed at any time during the following month but shall be effective on the first day of the month. The fee for renewal of all licenses issued under this chapter shall be established by the board. Upon failure to pay the renewal fee within the required period, a licensee may renew his or her license by submitting the required fee plus 20 percent of the customary license fee before the last day of the second month following his or her birth month. Any application received after this time shall be rejected unless accompanied by proof of successful completion of the examination required by the board. A licensed home inspector shall complete at least 20 hours of board-approved continuing education during each license period in order to maintain his or her license.

III. Licensees who have been activated by the military shall be exempt from any penalties or fees for renewal or reinstatement due to their absence, as approved by the board.

310-A:196 Disciplinary Action.

I. The board may undertake disciplinary proceedings:

(a) Upon its own initiative; or

(b) Upon written complaint of any person which charges that a person licensed by the board has committed misconduct under paragraph II and which specifies the grounds therefor.

II. Misconduct sufficient to support disciplinary proceedings under this section shall include:

(a) The practice of fraud or deceit in procuring or attempting to procure a license to practice under this subdivision.

(b) Conviction of a felony or any offense involving moral turpitude.

(c) Any unprofessional conduct, or dishonorable conduct unworthy of, and affecting the practice of, the profession.

(d) Unfitness or incompetence by reason of negligence or other causes; or negligent or willful acts performed in a manner inconsistent with the interests of persons relying on the expertise of the licensee.

(e) Addiction to the use of alcohol or other habit-forming drugs to a degree which renders the licensee unfit to practice under this subdivision.

(f) Mental or physical incompetence to practice under this subdivision.

(g) Willful or repeated violation of the provisions of this subdivision.

(h) Suspension or revocation of a license, similar to one issued under this subdivision, in another jurisdiction and not reinstated.

(i) Violations of the code of ethics for home inspectors, or any other rule adopted by the board.

(j) Providing false testimony before the board.

(k) Failure to provide, within 30 calendar days of receipt of notice by certified mail, return receipt requested, information requested by the board as a result of any formal complaint to the board alleging a violation of this subdivision.

(l) Knowingly making or signing any false statement, certificate, or affidavit in connection with the practice of home inspections.

310-A:197 Hearings.

I. The board shall take no disciplinary action without a hearing. At least 14 days prior to hearing, both parties to a disciplinary proceeding shall be served, either personally or by certified mail, return receipt requested, with a written copy of the complaint filed and notice of the time and place for hearing. All complaints shall be objectively received and appropriately pursued by the board. Written complaints received by the board shall be acknowledged within 3 months of the date of notice to the board. Written notice of all disciplinary decisions made by the board shall be given to both parties to the proceeding upon their issuance.

II.(a) The board shall have the power to administer oaths or affirmations, preserve testimony, subpoena witnesses, and to compel, by subpoena duces tecum, the production of all books, records, files and documents, whether originals, copies, or in electronic or other form, and other materials, relevant to its investigation of any grievance, complaint, or disciplinary proceeding before the board.

(b) The board may issue subpoenas with the approval of the office of the attorney general.

(c) A minimum of 10 business days' notice shall be given for compliance with a subpoena under this subdivision.

III. At any hearing, the named person or licensee shall have the right to:

(a) Appear in person, by counsel, or both.

(b) Produce evidence and witnesses.

(c) Cross-examine witnesses.

IV. If the named person fails or refuses to appear, the board may proceed to hear and determine the validity of the charges.

V. The board, upon making an affirmative finding under RSA 310-A:196, II, may take disciplinary action in any one or more of the following ways:

(a) By written reprimand.

(b) By suspension, refusal to renew, limitation or restriction of a license, or probation for a period of time determined to be reasonable by the board.

(c) By revocation of a license.

(d) By requiring the person to participate in a program of continuing education in the area or areas in which the person has been found deficient.

(e) By requiring the person to practice under the direct supervision of a licensed home inspector for a period of time specified by the board.

(f) By assessing civil penalties, after notification and due process, in amounts established by the board which shall not exceed \$2,000 per offense or, in the case of continuing offenses, \$200 for each day the violation continues, whichever is greater.

(g) By requiring the home inspector to obtain insurance against loss, expense and liability resulting from errors and omissions or neglect in the performance of services as a home inspector.

VI. Any person affected by a final decision of the board may appeal such final decision to the state building code review board, pursuant to RSA 155-A:11-a.

VII. In addition to any other action, the board may assess all reasonable costs incurred in connection with any disciplinary proceeding, including investigations, stenographers, and attorneys' fees, as a condition of probation or reinstatement.

VIII. Any disciplinary action by the board shall be published in the report of the board and shall be a public record in accordance with RSA 91-A.

310-A:198 Reissuance Of Licenses. The board, for reasons it may deem sufficient, may reissue a license to any person whose license has been suspended or revoked, provided 3 or more members of the board vote in favor of such reissuance. A new license may be issued, subject to the rules of the board, and a fee shall be charged for such issuance.

310-A:199 Violations; Penalty. It shall be a class B misdemeanor for any natural person or a felony for any business organization to:

I. Present or attempt to use the license of another as one's own;

II. Give any false or forged evidence of any kind to the board or to any board member in obtaining a license;

III. Falsely impersonate any other licensee of like or different name;

IV. Attempt to use an expired or revoked license;

V. Beginning January 1, 2010, practice home inspections or to offer, advertise, or hold oneself out to the public as being in the practice of home inspection in this state without a license ; or

VI. Violate any of the provisions of this subdivision.

310-A:200 Restraint Of Violations. The superior court shall have jurisdiction in equity to restrain violations of RSA 310-A:199 on proceedings brought by the attorney general, the board, or any society of licensed home inspectors duly incorporated under the laws of this state.

310-A:201 Exemptions. Nothing in this subdivision shall be construed to prevent or affect:

I. A person who is employed by a governmental entity from inspecting residential buildings if the inspection is within official duties and responsibilities.

II. A person from performing a home inspection if the inspection will be used solely by a bank, savings and loan association or credit union to monitor progress on the construction of a residential structure.

III. A person who is employed as a property manager for a residential structure and whose official duties and responsibilities include inspecting the residential structure from performing an inspection on the structure if the person does not receive separate compensation for the inspection work.

IV. A person who is regulated in another profession from acting within the scope of that person's license, registration or certification.

2 Joint Board. Amend RSA 310-A:1 to read as follows:

310-A:1 Joint Board Established. There shall be a joint board of licensure and certification for professional engineers, architects, land surveyors, foresters, professional geologists, natural scientists, landscape architects, [and] court reporters, **and home inspectors** consisting of each of the members of the board of professional engineers, board of architects, state board of licensure for land surveyors, foresters' board, board of professional geologists, the board of natural scientists, the board of landscape architects, [and] the board of court reporters, **and the board of home inspectors**. The joint board shall meet at least quarterly to carry out its duties established under this chapter.

3 Appeal to State Building Code Review Board. Amend RSA 155-A:11-a, I to read as follows:

I. The board shall hear appeals of final decisions of the board established under RSA 319-C:4 [and], the board established under RSA 329-A:3, **and the board established under**

4 Approval of Continuing Education Program. Within 2 years of the adoption of the continuing education program by the board of home inspectors pursuant to RSA 310-A:192, the program shall be ratified by appropriate legislation.

5 Effective Date. This act shall take effect July 1, 2008.

SENATOR CILLEY: Thank you, Madam President. I move that SB 212 ought to pass with amendment. SB 212 took a lot of hard work and compromise to make this piece of legislation what it is today. And, in fact, this bill, in one form or another, started four to five years ago. The purpose of this subdivision is to ensure that a home inspector performs professional services only when the home inspector is qualified by education and training in specific technical areas involved. SB 212 standardizes the practices of this industry and offers homeowners a greater degree of protection than they currently have now by home inspectors following the Code of Ethics. The Code of Ethics gives us core guidelines of home inspection professionalism and home inspection ethics, covering crucial areas such as conflicts of interests, good faith and public perception. Integrity, honesty, objectivity and fundamental principles are embodied by this code. When we buy a home, we rely on the standards, and this defines what the education and standards are that we all need to know and follow. Each applicant for licensure as a home inspector shall meet the following requirements, such as the completion of no less than 80 hours of board-approved education covering core components of a residential building. A board of home inspectors is established to administer the provisions of this subdivision holding its applications, places of business, applicant's education, proof of passing an exam and the proof of their license granted. The board established to oversee all this consists of five members being home inspectors, one from the Executive Council district nominated by the respective executive councilors and appointed by Governor and Council, and two public members, each appointed by

Governor and Council, who is not or never was a home inspector to endure no conflict of interest. The board will hold three meetings a year. With various changes and a well-built model of responsibility, I have great faith in the benefits of SB 212. Please join the ED&A Committee and vote ought to pass. Thank you.

(The Chair recognized Sen. Burling to speak.)

SENATOR BURLING: Thank you, Madam President. I have a word of "thanks" to offer. I know I shouldn't do this before we take the vote, but I have a sense that we have consensus. An exceptional job was done on this bill, and the members of the ED&A Committee who didn't do the hard work would like to say thank you to the woman who did, and she's right here on my left. Hard to overstate how difficult the process of negotiation was on this. I would also like to say "thanks" to my colleague from down in the southern part of the state, because I have a sense that without the support of Sen. Clegg, we would not have reached an agreement on this. For that, I'm truly grateful. A superb piece of work by both Senators.

SENATOR CILLEY: I can't let that pass without a response, and I appreciate the chair's very eloquent, you know, compliment. This bill would not have passed without the entire help of the Committee. They knew, you know, the trial and tribulations of this, and I, too, want to add that Sen. Clegg was incredibly instrumental in finally getting a bill that we all feel good about, so thank you.

**The question is on the adoption of Committee Amendment 2670s.
Committee Amendment 2670s adopted.**

The question is on the adoption of Ought to Pass as Amended on SB 212-FN.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

Sen. Kenney is in opposition to SB 212-FN.

SB 114-FN, relative to licensed acute care hospitals. Health and Human Services Committee. Inexpedient to Legislate, Vote 5-0. Senator Sgambati for the committee.

SENATOR SGAMBATI: Thank you, Madam President. I move Senate Bill 114 inexpedient to legislate. The original legislation called for a new class of specialty hospitals to be created, allowing overnight stays in ambulatory surgical centers. During the course of the meetings on the re-referred bill, it was evident that there was little support for this concept, but instead we worked to reduce the costs and to simplify the Certificate of Need process. That work will be introduced in a new bill which requires and deserves public input and a full hearing. So as such, I would request your support for an action of inexpedient to legislate on Senate Bill 114. Thank you.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on SB 114-FN.

Motion of Inexpedient to Legislate adopted.

SB 163-FN, relative to housing assistance for families in the Temporary Assistance to Needy Families (TANF) program. Health and Human Services Committee. Ought to Pass with Amendment, Vote 6-0. Senator Fuller Clark for the committee.

Health and Human Services
January 3, 2008
2008-0054s
05/04

Amendment to SB 163-FN

Amend RSA 167:7, III-a as inserted by section 1 of the bill by replacing it with the following:

III-a. The department shall identify the neediest families who are receiving TANF and shall issue such families a monthly \$250 supplemental rent voucher. The voucher shall be issued directly to the parent or caretaker relative of the TANF assistance group and shall be made payable to their landlord. The department shall ensure that, whenever possible, receipt of the voucher shall not affect the assistance group's eligibility for any other supplemental benefit program. The department shall establish rules, pursuant to RSA 541-A, relative to program eligibility and the definition of need for purposes of the supplemental rent voucher.

2008-0054s

AMENDED ANALYSIS

This bill establishes a monthly \$250 supplemental rent voucher for the neediest families who are receiving TANF.

MOTION TO TABLE

Sen. D'Allesandro moved to have SB 163-FN laid on the table.
Motion adopted.

LAI D ON THE TABLE

SB 163-FN, relative to housing assistance for families in the Temporary Assistance to Needy Families (TANF) program.

CACR 20, relating to funding of public education. Providing that the local political subdivision shall provide public education and determine curriculum and the amount of funding thereof, and the legislature shall have the authority to make reasonable determinations as to public education, provide supplemental funding, and determine the amount and allocation of such state funds. Judiciary Committee. Inexpedient to Legislature, Vote 5-0. Senator Foster for the committee.

MOTION TO TABLE

Sen. Foster moved to have CACR 20 laid on the table.
Motion adopted.

LAI D ON THE TABLE

CACR 20, relating to funding of public education. Providing that the local political subdivision shall provide public education and determine curriculum and the amount of funding thereof, and the legislature shall have the authority to make reasonable determinations as to public education, provide supplemental funding, and determine the amount and allocation of such state funds.

SB 165-FN, relative to informing physicians of results of the screening panels for medical injury claims. Judiciary Committee. Inexpedient to Legislature, Vote 5-0. Senator Gottesman for the committee.

SENATOR GOTTESMAN: Thank you, Madam President. I move Senate Bill 165 as inexpedient to legislate. As of this date, only very few hearings have been held. The way this bill is written, the duties are not easily

performed. Neither is the Committee sure that the procedure called for in the bill needs to be done. While the purpose of informing the public of problems with medications and treatment is well-intended, the Committee is concerned that the screening panel process is not the place for something like this. Therefore, the Judiciary Committee asks your support for the motion of inexpedient to legislate. Thank you.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on SB 165-FN.

Motion of Inexpedient to Legislate adopted.

SB 240-FN, establishing contractual cohabitation and extending certain rights to parties to a contractual cohabitation. Judiciary Committee. Inexpedient to Legislate, Vote 5-0. Senator Clegg for the committee.

SENATOR CLEGG: Thank you, Madam President. I move Senate Bill 240 inexpedient to legislate. I brought this legislation forward because there are clear reasons for providing legal protection to individuals who choose to live together without marriage. There could be seniors who could lose important benefits, or siblings who are raising a niece or a nephew. The Civil Union legislation has just gone into effect. It's much too early to know what dynamics will come into play, what kind of litigations, the intended or unintended consequences. At this time, I've asked that Senate Bill 240 be found inexpedient to legislate so that we, as a Legislature, can observe what happens over the next few months and make informed decisions on any further actions we may need to do to protect our citizens. Thank you.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on SB 240-FN.

Motion of Inexpedient to Legislate adopted.

SB 250-FN, relative to damages awarded to a prisoner resulting from prison conditions litigation. Judiciary Committee. Inexpedient to Legislate, Vote 5-0. Senator Gottesman for the committee.

SENATOR GOTTESMAN: Thank you, Madam President. I move Senate Bill 250 as inexpedient to legislate. The provisions of Senate Bill 250 sought to enable any department to be able, ex post facto, which means "after the fact," to nullify decisions made that gave awards to prisoners by the State. This doesn't make any sense. Therefore, the Judiciary Committee asks that the legislation be found inexpedient to legislate and asks your support. Thank you.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on SB 250-FN.

Motion of Inexpedient to Legislate adopted.

SB 264, relative to filing liens on personal and real property to recover uncollected small claims judgments. Judiciary Committee. Ought to Pass with Amendment, Vote 5-0. Senator Reynolds for the committee.

Senate Judiciary

January 9, 2008

2008-0079s

09/01

Amendment to SB 264

Amend the title of the bill by replacing it with the following:

AN ACT relative to creating liens on personal and real property to recover uncollected small claims judgments.

Amend the bill by replacing all after the enacting clause with the following:

1 New Section; Recording to Secure Small Claims Judgment. Amend RSA 503 by inserting after section 11 the following new section:

503:12 Small Claims Judgment.

I. Notwithstanding the attachment process available under RSA 503:3-c, the prevailing party in a small claims section may secure a judgment entered in accordance with this chapter by recording a certified copy of the judgment with the registry of deeds no later than 90 days from the date of entry of the judgment.

II. The duration of any certified small claims judgment so filed shall be as provided under RSA 511:55.

III. In all counties when a small claims judgment recorded upon real estate is satisfied, the small claims plaintiff or his or her attorney, upon request, shall give to the defendant or owner of the land a discharge thereof, and the defendant or owner of the land, within 30 days after such judgment is satisfied, shall cause the discharge to be recorded in the office of the register of deeds in which said judgment is recorded, and shall pay the register of deeds the fee established pursuant to RSA 478:17-g. The failure of the plaintiff to comply with the provisions of this section shall be a violation.

IV. If such plaintiff fails to make such discharge of the small claims judgment within 30 days from receipt of payment of the judgment or if other exigent circumstances require an immediate discharge, an attorney-at-law licensed to practice in the state of New Hampshire may, on behalf of the small claims defendant, execute and cause to be recorded in the registry of deeds in which the small claims judgment is recorded, an affidavit which states that:

(a) The affiant is an attorney-at-law in good standing and licensed to practice in the state of New Hampshire.

(b) The affidavit is made on behalf of, and at the request of, the small claims defendant or owner of the land.

(c) The small claims defendant has paid in full the small claims judgment, as evidenced either by a bank check, certified check, or attorney's clients' funds account check which bears no indication of a stop payment order or return for insufficient funds or by other equivalent documentary evidence of such receipt of payment.

(d) The affiant has given the small claims plaintiff at least 10 days' notice in writing by certified mail, sent to the plaintiffs last known address, of intention to execute and cause to be recorded an affidavit, in accordance with this section, together with a copy of the proposed affidavit, and the small claims plaintiff has not delivered a discharge in response to such notification.

V. The affidavit shall include the names and addresses of both the small claims plaintiff and the defendant, the date and amount of the small claims judgment, and the name of the underlying case.

VI. The affiant shall attach to the affidavit the following, certifying that each copy is a true copy of the original document: photostatic copies of the documentary evidence that payment has been received by the small claims plaintiff, including the plaintiffs endorsement of any bank check, certified check, attorney's clients' funds account check, or equivalent documentation.

VII. The affidavit, when recorded, shall constitute a discharge of the small claims judgment and a release of the lien created by the recording of the small claims judgment.

VIII. Any person who causes an affidavit to be recorded in accordance with this section, knowing the information and statements contained in the affidavit to be false, shall be guilty of a class B misdemeanor.

2 Attachable Property; Availability of Post-Judgment Attachment. Amend RSA 511:1 to read as follows:

511:1 Attachable Property. All property, real and personal, which is liable to be taken in execution, may be attached and held as security for the judgment the plaintiff may recover. ***Such property may be attached following the entry of judgment for the plaintiff.***

3 Effective Date. This act shall take effect 60 days after its passage.

2008-0079s

AMENDED ANALYSIS

This bill establishes a process for a prevailing party in a small claims action to secure the judgment by creating a lien against the losing party's personal and real property by recording a certified copy of the judgment with the registry of deeds.

SENATOR REYNOLDS: Thank you, Madam President. I move ought to pass with amendment on SB 264. This legislation was filed because of problems many citizens and small businesses were having in enforcing and collecting small claims judgments. Too often, one can "win" in the district court and then find out that the prevailing party has no mechanism to recover the judgment. The Judiciary Committee was in complete agreement that the procedures observed in all of our district courts are not uniformly adhered to. This bill helps our citizens in New Hampshire, including many small businesses, to recoup the judgments in a cost-effective way. The Committee amended the legislation in order to clearly establish in statute a mechanism whereby the judgment could be recorded at the registry of deeds. The Judiciary Committee recommends that this legislation be voted as ought to pass with amendment and asks for your support. Thank you.

The question is on the adoption of Committee Amendment 0079s. Committee Amendment 0079s adopted.

SENATOR FOSTER: Thank you, Madam President. I just want to thank Senator DeVries for bringing this issue forward, as a member of the bar, and there are some other lawyers in this body. This is something that really is going to help our constituents in the small claims matters and in other ways, and I am glad that it was brought forward so we could work on it and come up with a good product. Thank you, Madam President.

The question is on the adoption of Ought to Pass as Amended on SB 264.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

HB 463, relative to the awarding parental rights and responsibilities to a stepparent or grandparent. Judiciary Committee. Inexpedient to Legislate, Vote 5-0. Senator Reynolds for the committee.

SENATOR REYNOLDS: Thank you, Madam President. I move inexpedient to legislate on HB 463. This legislation was filed in an attempt to clarify that the statutes provide that grandparents have recognition in parental rights and responsibility decisions in our courts. However, the Committee recognizes that many grandparents are playing a major role in raising or helping to raise their children when the parents can-

not. The Committee had concerns that if we were to adopt the language and actually remove from statute the sentence regarding grandparents, that the jurisdiction would be removed from the Family Division. Recent New Hampshire Supreme Court decisions make it very clear that this language formed the basis for making parenting decisions to either stepparents or grandparents. The Committee has no desire to weaken the rights of either grandparents or stepparents who wish to be involved in caretaking for children. The Judiciary Committee recommends that this bill be voted as inexpedient to legislate and asks for your support. Thank you.

The question is on the committee recommendation of Inexpedient to Legislate on HB 463.

Motion of Inexpedient to Legislate adopted.

HB 539-FN, relative to manslaughter. Judiciary Committee. Inexpedient to Legislate, Vote 5-0. Senator Gottesman for the committee.

MOTION TO TABLE

Sen. Gottesman moved to have HB 539-FN laid on the table.

Motion adopted.

LAID ON THE TABLE

HB 539-FN, relative to manslaughter.

SB 62-FN, relative to penalties for violations of the state building code. Public and Municipal Affairs Committee. Inexpedient to Legislate, Vote 6-0. Senator DeVries for the committee.

SENATOR DEVRIES: Thank you, Madam President. I move Senate Bill 62-FN inexpedient to legislate. This bill makes a violation of state building code a misdemeanor. The Committee supports the intent of this legislation; however, we believe that this authority exists elsewhere in statute. Moreover, we believe changes of this nature would be best addressed by the Judiciary Committee. Please join the members of the Public and Municipal Affairs Committee in voting Senate Bill 62-FN inexpedient to legislate. Thank you.

The question is on the committee recommendation of Inexpedient to Legislate on SB 62-FN.

Motion of Inexpedient to Legislate is adopted.

SB 199, relative to the assessment of property subject to a housing subsidy restriction. Public and Municipal Affairs Committee. Ought to Pass with Amendment, Vote 6-0. Senator DeVries for the committee.

Sen. DeVries, Dist. 18

November 16, 2007

2007-2665s

10/04

Amendment to SB 199

Amend the bill by replacing section 2 with the following:

2 New Section; Residential Property Subject to Housing Subsidy Restriction. Amend RSA 75 by inserting after section 1 the following new section:

75:1-a Residential Property Subject to Housing Subsidy Restriction. The appraisal for property tax purposes on multifamily residential rental property which is entitled to federal low income housing tax credits un-

der Section 42 of the Internal Revenue Code and which is subject to a recorded housing subsidy covenant or other legal restriction imposed by a governmental entity or instrumentality that restricts tenant eligibility and rents shall, upon the affirmative request of the taxpayer, be determined by an income approach. A copy of the recorded land use restriction required by Section 42 of the Internal Revenue Code or other low income rental use restriction covenant required by the New Hampshire housing finance authority, is sufficient proof of entitlement. To make an annual election for an appraisal of property subject to a recorded housing subsidy restriction, the taxpayer shall, by March 31, provide relevant information described in this section and request that the municipal assessor use the income approach. The income approach factors shall be:

I. Potential gross income, determined as follows:

(a) For units receiving assistance under a project-based rental subsidy contract, using the rents specified in the contract.

(b) For all other units subject to a legal restriction, using the maximum restricted rents allowed by the legal restrictions governing the rents of the units for the geographic area in which the property is located. Where multiple legal restrictions apply, the most restrictive shall be used. Maximum restricted rents shall be adjusted as appropriate using utility allowances for the geographic area in which the property is located, and as provided by the New Hampshire housing finance authority pursuant to RSA 204-C:8-a.

(c) For all non-restricted units in properties where only a portion of the units are subject to a legal restriction, using non-restricted rents as determined by the local market.

II. Actual operating expenses, including deposits to reserve accounts required by the housing subsidy covenant or other legal restriction, but excluding mortgage debt service and depreciation, incurred with respect to the property, as provided by the taxpayer and certified by a third-party certified public accountant.

III. A vacancy loss rate that is equal to the rental market vacancy rate for the geographic area in which the property is located, as provided by the New Hampshire housing finance authority pursuant to RSA 204-C:8-a.

IV. A capitalization rate that is typical for the geographic area in which the property is located, as determined annually by March 31 by the commissioner of revenue administration, and as published by the New Hampshire housing finance authority pursuant to RSA 204-C:8-a.

V. The assessed valuation of residential rental property with restricted rents shall not take into consideration the value of intangible assets including, but not limited to, government subsidies or grants, below market rate mortgage financing, rental subsidy contracts, and tax credits where such subsidies are used to offset project development expenses in order to allow for restricted rents. The assessed valuation shall not take into consideration the actual cost of acquisition or construction of the project.

Amend the bill by replacing section 4 with the following:

4 Effective Date. This act shall take effect July 1, 2008.

SENATOR DEVRIES: Thank you again, Madam President. I move Senate Bill 199 ought to pass with amendment. This bill will provide a procedure for the assessment of property subject to rent restrictions if tax credits are used in the initial funding scenario. Tax credits for an influx of capital into a project at startup. Current procedures for the determination of property taxes on these properties are often skewed because of this initial investment. Without Senate Bill 199, assessments may

outstrip actual income potential for properties. Senate Bill 199 would provide assessors the necessary statutory clarification as recommended by the Board of Land and Tax Appeals relative to property tax evaluation for tax credit properties. Without this legislation, it will be difficult to sustain current projects as well as attract new investors to affordable housing projects. It has long been the policy in New Hampshire to encourage public, private partnerships in developing affordable housing properties. Utilizing tax credits to allow private investment at the start of a project has successfully built 130 properties and 4200 apartments since 1986. I would note that I will be offering a floor amendment that I will ask to have adopted. So at this time I would ask that you vote down the committee amendment so that I can bring forward a replacement. Thank you.

PARLIAMENTARY INQUIRY

SENATOR BURLING: Just a brief parliamentary inquiry. I think I'm a little confused by the Senator's request. The motion before us is "ought to pass with amendment," is it not? And the amendment will be offered?

PRESIDENT LARSEN: The motion is ought to pass with amendment, and the amendment I believe is in your Senate Calendar. That is the amendment that Senator DeVries has asked to be voted down in order to replace it with a floor amendment of similar nature.

SENATOR BURLING: So it is, if I may, it would be the subsequent amendment that the Senator would like us to adopt.

PRESIDENT LARSEN: That is my understanding.

SENATOR BURLING: Thank you.

(The Chair recognized Sen. Foster.)

SENATOR FOSTER: Just for clarification, 'cause maybe I started listening to the conversation halfway through. Does the floor amendment that's going to be offered replace the committee amendment or does it fit together with the committee amendment?

(The Chair directed Sen. Foster's question to Sen. DeVries.)

SENATOR DEVRIES: Thank you, Madam President. Senator, certainly the – the floor amendment that I will bring forward does replace the committee amendment. So it would be my request at this time that we vote against the committee amendment so that I can bring forward my floor amendment.

Recess/Out of Recess.

The question is on the adoption of Committee Amendment 2665s on SB 199.

PRESIDENT LARSEN: Senate Bill 199 is now on second reading. The first order of business is the committee amendment. There was a parliamentary inquiry during the recess how we – which procedure keeps section 1 of the bill intact. If you vote for the committee amendment, you will be voting for section 1 and 2. The floor amendment, we understand, will revise section 2 of the bill, keeping section 1 intact. So, the question before the body is the adoption of the committee amendment.

Committee Amendment 2665s adopted.

Recess/Out of Recess.

Sen. DeVries offered a floor amendment on SB 199.

Sen. DeVries, Dist. 18
December 27, 2007
2008-0023s
10/01

Floor Amendment to SB 199

Amend the bill by replacing all after section 1 with the following:

2 New Section; Residential Property Subject to Housing Subsidy Restriction. Amend RSA 75 by inserting after section 1 the following new section:

75:1-a Residential Property Subject to Housing Subsidy Restriction. The appraisal for property tax purposes on multifamily residential rental property which is entitled to federal low income housing tax credits under Section 42 of the Internal Revenue Code and which is subject to a recorded housing subsidy covenant that restricts tenant eligibility and rents shall, upon the affirmative request of the taxpayer, be determined by an income approach. A copy of the recorded land use restriction required by Section 42 of the Internal Revenue Code or other low income rental use restriction covenant required by the New Hampshire housing finance authority, is sufficient proof of entitlement. To make an annual election for an appraisal of property subject to a recorded housing subsidy restriction, the taxpayer shall, by March 31, provide relevant information described in this section and request that the municipal assessor use the income approach. The income approach factors shall be:

I. Potential gross income, determined as follows:

(a) For units receiving assistance under a project-based rental subsidy contract, using the rents specified in the contract.

(b) For all other units subject to a legal restriction, using the maximum restricted rents allowed by the legal restrictions governing the rents of the units for the geographic area in which the property is located. Where multiple legal restrictions apply, the most restrictive shall be used. Maximum restricted rents shall be adjusted as appropriate using utility allowances for the geographic area in which the property is located, and as provided by the New Hampshire housing finance authority pursuant to RSA 204-C:8-a.

(c) For all non-restricted units in properties where only a portion of the units are subject to a legal restriction, using non-restricted rents as determined by the local market.

II. Actual operating expenses, including deposits to reserve accounts required by the housing subsidy covenant or other legal restriction, but excluding mortgage debt service and depreciation, incurred with respect to the property, as provided by the taxpayer and certified by a third-party certified public accountant.

III. A vacancy loss rate that is equal to the rental market vacancy rate for the geographic area in which the property is located, as provided by the New Hampshire housing finance authority pursuant to RSA 204-C:8-a.

IV. A capitalization rate that is typical for the geographic area in which the property is located, as determined annually by March 31 by the commissioner of revenue administration, and as published by the New Hampshire housing finance authority pursuant to RSA 204-C:8-a.

V. The assessed valuation of residential rental property with restricted rents shall not take into consideration the value of intangible assets including, but not limited to, government subsidies or grants, below market rate mortgage financing, rental subsidy contracts, and tax credits where such subsidies are used to offset project development

expenses in order to allow for restricted rents. The assessed valuation shall not take into consideration the actual cost of acquisition or construction of the project.

3 New Section; Housing Finance Authority; Publication Required. Amend RSA 204-C by inserting after section 8 the following new section:

204-C:8-a Publication Required. The authority shall publish annually such information on maximum restricted rents, utility allowances, vacancy rates, and capitalization rates as necessary to appraise property pursuant to RSA 75:1-a.

4 Effective Date. This act shall take effect July 1, 2008.

SENATOR DEVRIES: Has that amendment been distributed?

PRESIDENT LARSEN: Not yet. You may speak as it's being distributed.

SENATOR DEVRIES: Thank you, Madam President. I would note that the floor amendment is substantially identical to the committee amendment. There are changes of language. We have deleted in section 2 some language that related back to the original bill that said "imposed by other governmental entities." Since we have narrowed this legislation to only tax credit properties, that language was no longer needed. So we are deleting that in section 2. Also, at the very end of the bill, in section 3 – and let me make sure that it is reading – yes, in section 3. Actually, it would be on line 14. There was language which we thought might become problematic or confusing, which used to say "to determine fair market value of residential properties subject to housing subsidy restrictions." We have simplified that language and we have removed it and replaced it with "to appraise property." It is just simple English language that will leave no room for confusion. Those are the only two minor changes in the floor amendment.

To clarify for the record on this legislation, Senate Bill 199, I would like to state that if there is any transfer of this property, it is our – my understanding that there is still going to be an annual review done by the tax assessor's office, that every March 31 property owners have to prove that they still have the deeded rent restrictions in place so that there can be no exchange of properties which would give other – would give full-market rental support to the building without – while still having a reduced tax property tax. So every year there is a review to make sure that all these buildings are still eligible. Again, these are just tax credit properties. There are very few of them in the state. Manchester, we have been told there are approximately 14 properties that this would affect. So it's a very narrow group. Thank you very much.

(The Chair recognized Sen. Gatsas for a question of Sen. DeVries.)

SENATOR GATSAS: Thank you, Madam President. Can you tell me, how does this apply to the statewide property tax?

SENATOR DEVRIES: I cannot answer that question for you, Senator. This would – how would this ... I mean, you're talking about the education funding –

SENATOR GATSAS: Yes.

SENATOR DEVRIES: – which is a portion of each, and if there's a reduction in your full property taxation, I would imagine that reduces. I'm not familiar with that component, though.

SENATOR GATSAS: Okay. Thank you.

(The Chair recognized Sen. Burling to speak.)

SENATOR BURLING: Thank you. It's my understanding that the assessment used by local assessors to calculate local property tax assessment is the same assessment used by the statewide property tax, and that that, therefore, adoption of this evaluation modality will affect that small number of properties which are, in essence, tax subsidized low-income housing units. There again, probably a good thing if we're interested in providing low-income housing in our beautiful cities and towns, including yours.

The question is on the adoption of Floor Amendment 0023s.

Floor Amendment 0023s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 199.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 257-FN, relative to penalties for life safety code violations under municipal housing standards. Public and Municipal Affairs Committee. Inexpedient to Legislate, Vote 6-0. Senator DeVries for the committee.

SENATOR DEVRIES: Thank you, Madam President. I move that Senate Bill 257-FN is inexpedient to legislate. This bill would have permitted municipalities to provide that violations of the life safety code are misdemeanors. The Committee supports the intent of this legislation, but believes that current statutes already provide substantial authority to municipalities. Please join the Public and Municipal Affairs Committee in voting Senate Bill 257-FN inexpedient to legislate. Thank you.

The question is on the committee recommendation of Inexpedient to Legislate on SB 257-FN.

Motion of Inexpedient to Legislate adopted.

HB 379, relative to the adoption, revision, and amendment of municipal charters. Public and Municipal Affairs Committee. Interim Study, Vote 5-0. Senator Burling for the committee.

SENATOR BURLING: Thank you, Madam President. Madam President, I move to send House Bill 379 to interim study. May I speak to that motion?

PRESIDENT LARSEN: You may speak to the motion.

SENATOR BURLING: This bill revises the process for the adoption revision and amendment of municipal charters. The bill is an excellent attempt at modernizing the process of adopting municipal charters. However, the committee members, after consultation with the Attorney General, the Secretary of State and many parties in interest and who are familiar with this charter adoption process, came to believe that the bill needs quite a bit, much more work. There is a provision in the bill, or maybe it's an unintended consequence of the bill that would dramatically affect state elections; we need to look at that. The long and short of all of our consideration was that we recommend 379 be sent to interim study. We ask for your support on doing that. Thank you, Madam President.

The question is on the adoption of committee recommendation of Refer to Interim Study on HB 379.

Motion of Refer to Interim Study adopted.

HB 380, relative to the forms of government under town charters. Public and Municipal Affairs Committee. Interim Study, Vote 5-0. Senator Burling for the committee.

SENATOR BURLING: Thank you, Madam President. Madam President, I move the bill be sent to interim study, and ask to speak to that motion.

PRESIDENT LARSEN: You may speak.

SENATOR BURLING: Thank you, Madam President. This bill provides for five separate and distinct methods of local government which may be adopted by town charter. While all are interesting and important ideas, after hearing the proposal and after consultation with, again, the Secretary of State and the Attorney General, the Committee came to believe that it is appropriate to send the bill to interim study, along with 379, so that we can be clear on all the unintended consequences that may arise. We ask, therefore, that you join us, the Public and Municipal Affairs Committee, in voting to send HB 380 to interim study. Thank you, Madam President.

The question is on the adoption of committee recommendation of Refer to Interim Study on HB 380.

Motion of Refer to Interim Study adopted.

HB 754-FN, repealing the law relative to the Maine-New Hampshire Interstate Bridge Authority. Transportation and Interstate Cooperation Committee. Ought to Pass, Vote 3-1. Senator Burling for the committee.

SENATOR BURLING: Thank you, Madam President. Madam President, I move House Bill 754-FN ought to pass. And I'd like to speak to my motion, if I may.

PRESIDENT LARSEN: You may proceed.

SENATOR BURLING: First, about bridges. Until 15 minutes ago, even I had the placement of the Sarah Mildred Long Bridge wrong. It is one of three bridges that cross Portsmouth Harbor. It's the middle bridge. It is the bridge that rises between two vertical columns and comes down again. It carries a highway and a railroad track, and it was built in the mid '30s and entrusted to the Maine/New Hampshire Mildred Long Bridge Authority. It has served the state very well since its construction. It is essential to the transportation integrity of the City of Portsmouth and the adjoining communities. Until the early '70s, when the bridge on Interstate 95 was completed, the Mildred Long Bridge carried a toll of ten cents. For pretty obvious reasons, when the toll-free I-95 bridge was opened, the ability of the twin state Bridge Authority to maintain even a ten-cent toll on the Mildred Long Bridge expired and it was a toll taken off. At the time, the members of the Authority, frankly, thought that they had enough capital in the corpus of the fund to maintain the bridge until the bridge's expiration date, until such time as it was ready to come down.

We have now reached, not the expiration date of the bridge, the bridge is still strong and an exceptional piece of our transportation assets, but the fund is gone. If it isn't gone this month, it will be pretty much by the end of April. That leaves us with a very valuable transportation asset which needs some attention, which is the joint responsibility of Maine and New Hampshire, and which needs to get into the hands of the states in order for repairs to be made to the internal structures of the bridge. Well, the internal structures – this is a big solid steel bridge. It's very well engineered, it's very well built. But it relies on extensive electrical systems

which drive the big electric motors that allow the bridge to be raised and lowered. There are redundant systems that need to be attended to. And we know over the last year we've seen a couple of instances in which the bridge either held up, it got a little out of level and jammed while utilization of the primary elevating system was in place. Long and short, as much as I love this bridge, we need to get it fixed.

What happens if we do nothing? Well, the bridge may jam, in which case our ability to get heating oil up to the tanks from which many, many, many of our heating oil suppliers pick up their heating oil for distribution throughout the state, that access may be barred. If the bridge were to jam partway up, but lower than the appropriate elevation for a boat, a ship, an oil tanker, we'd be in trouble. It is in the interest of all of us to see that this bridge is repaired. That is the reason for this bill. Passage of this bill, which is matched by legislation in Maine, and which then will require congressional action in Congress, will place the bridge in the hands of the two states. And the State of New Hampshire, by agreement, has the repair authority. We will be able to get started. We need to get started right now, because, all of you who are fans of our transportation system, the No. 1 bridge on the red list is the Memorial Bridge. That's not the 95 Bridge, it's the Memorial Bridge. That is the number one, single most important repair of all the bridges in the state, red list. In order to get the Memorial Bridge started in its major reconstruction, we have to have the Sarah Mildred Long Bridge ready to take that traffic flow. So we need to address Sarah Mildred Long first, get started on the Memorial, and begin to address some of what we've been deferring for many, too many years. At the core of this, in my view, Madam President, is the essential issue of addressing what's been deferred for many, too many years. We know now it doesn't take a genius to drive around the states {sic} of this wonderful state and see that we have an obligation to get started.

I will offer an amendment, and perhaps I'll – if I get my process right, if this vote passes, then it's open to further amendment, then I'll offer my amendment at that time.

PRESIDENT LARSEN: That's correct.

(The Chair recognized Sen. Hassan for a question of Sen. Burling.)

SENATOR HASSAN: Sen. Burling, it's my understanding that once the two states take possession of the bridge back, that we will be eligible to receive some federal funds towards the repairs; is that correct?

SENATOR BURLING: Yes, though, as my son always says, "Promises, promises; jingle-bells; ding-dong." That's what we've been promised by the feds. Yes.

SENATOR HASSAN: Thank you.

SENATOR BURLING: But the important point is unless the two states have actual authority over the bridge, we don't access to that money.

SENATOR HASSAN: Thank you.

(The Chair recognized Sen. Fuller Clark to speak.)

SENATOR FULLER CLARK: Thank you, very much. I rise in support of this legislation. I thought it might interest you, just to put into context, since Sen. Burling raised the question of the three big bridges, that the Memorial Bridge was opened in 1922, it was the very first bridge to connect that part of New Hampshire to Maine. Before that time, the only way you could travel to Maine was either over the footbridge, which is

where the Sarah Long Bridge is, or by the use of ferries. And for those of you who knew, and know Eileen Foley, Eileen Foley, who was a Senator here in New Hampshire, at the age of five in 1922, stood with her mother, who was the mayor, to cut the ribbons to open that bridge. So we have living history amongst us. But that was the very, very first bridge to cross the Piscataqua into Maine. Then you had the Sarah Long Bridge which was built over the footbridge and railroad bridge in 1937. As a child we always referred to it as the "Ten cents bridge" that we were going over. And then, in 1973, with the completion of I-95, the high-rise bridge was built that also carries traffic from New Hampshire to Maine and back again.

I'm here today to urge my fellow colleagues to vote in favor of this legislation. From my constituents who rely on this bridge, it is essential that we act quickly. And we can see what happened last year when the mechanism broke and had to be repaired for raising, it's the second raising bridge. The Memorial Bridge also has to be a lift bridge to allow significant cargo to pass up the Piscataqua River. Today we have the opportunity to take steps to correct problems, such as the one that I just mentioned, that are the result of more than 20 years of deferred maintenance. Passage of this legislation at this time recognizes that maintaining Portsmouth's infrastructure is critical not only to the community of Portsmouth and the surrounding communities, but to the entire state's economic health, and it is essential that we should move forward. Thank you.

(The Chair recognized Sen. Letourneau to speak.)

SENATOR LETOURNEAU: Thank you, Madam Chairman, Madam President. Last year I rose and spoke on this particular piece of legislation because I felt as though that it was a lot of money gonna be involved and the people who were responsible for the authority of the bridge didn't take care of their responsibility. Everything that's been said here about this bridge today is true, and I know that it's an important piece of the infrastructure. However, the way it's going to be paid for and what it's coming up on as far as expenses on this bridge, is dramatic. As you all know, the new transportation plan that's been offered from the Governor's Office to the Legislature this year, cuts out one and a half billion dollars of transportation projects from all our districts. One and a half billion dollars of hard-fought projects. My district ends up with about a half a million dollars in projects on a ten-year highway plan, not counting 93. The Portsmouth area has a hundred and twenty million dollars of projects in it. This bridge is going to add another \$20 million that's not even included in that report. How this bridge is paid for, I think the feds should pick it up, if it's that important. Why should the people in my district, your district, pick up the tab for a bridge over there that somebody back in 1972, Commissioner Wally Stickney said, "When they stopped collecting the tolls, the die was cast. The point will be reached when the Authority can't generate enough funds." And today we're seeing that effect. They've had 36 years to fix this problem. Thirty-six years this has been facing them. Suddenly, because the Memorial Bridge is the No. 1 bridge on the "Red List" bridge, this bridge is now very, very important.

I might add that in my research on the bridge, the bridge goes up and down 3,062 times in 2006. That's how many times boats had to go underneath it, and marine traffic does have the right of way and that bridge is so low that it has to be a lift bridge. Fourteen thousand cars a day pass over that bridge, so a lot of people are using it. I had offered an amendment, along with Sen. Clegg, in committee, to put a toll on the bridge

to help pay for the bridge. It seems only fair that those who are using it should pay for it. It doesn't do my district any good to have that \$20 million taken out of projects from my area and being spent over there on that bridge. A lot of people from Maine use that bridge. And I understand that Maine's going to pick up half the tab, because the cost of rebuilding the bridge is going to be \$40 million. So the 20 million that I'm talking about is New Hampshire's share of the \$40 million, rebuilt. So, when I vote against this particular bill, it's not because I don't want to fix the bridge. It's because I don't like the way it's being paid for. So that's my explanation on that. Thank you very much, Madam President.

(The Chair recognized Sen. Barnes for a question of Sen. Burling.)

SENATOR BARNES: Thank you, Madam President. Sen. Burling, you mentioned a little bit about the feds. How important is that bridge to the shipyard?

SENATOR BURLING: The bridge is very important to the shipyard, but I would ... would think that's something we all take sort of senatorial cognizance of.

SENATOR BARNES: May I follow up, Madam President?

PRESIDENT LARSEN: Follow-up question.

SENATOR BARNES: Well, seeing that it's so important to our "federal" shipyard, don't you think it would be wonderful if the federal government were more – and I know what your boy says, I couldn't remember the words that you used, but the words I used, I think the federal government, as important as that bridge is – and I agree with you, I think it's a very important bridge to the defense of this country – I think the government, and I think our congressional delegation should perhaps get involved, and the federal government should be paying for the cost of that bridge. And, furthermore, would you believe, Senator, that I have a problem with the State of Maine "perhaps" coming up with half of the cost. We are still waiting for the State of Massachusetts to come up with flood money that's been owed us for years. So I don't trust the State of Maine to come up with half of the repair cost; would you believe that?

SENATOR BURLING: I would never question your beliefs, Senator.

SENATOR BARNES: Well, we could go further, but at a later time. Thank you, Senator.

(The Chair recognized Sen. Fuller Clark to speak.)

SENATOR FULLER CLARK: Yes, I would like to speak a second time. I think it's important to clarify, as was pointed out in the earlier statement by Sen. Burling, but then the issue was raised again by Sen. Letourneau saying that the Interstate Authority could have kept the tolls and continued to receive revenue. In actuality, with the opening of the I-95 Bridge, there was no way that they could continue to collect those tolls, and you would have driven an additional 14,000 cars onto I-95 if the tolls had remained in place. And I just wanted to clarify that and have it in the record, because the implication was that the Interstate Authority didn't do their job, and I think it's important that we understand why it was no longer feasible for them to collect those tolls. And they did the very best that they could, and with the capital money that was left, they had maintained that bridge for – ever since 1972, in terms of annual maintenance. But what we're looking at here is the need now for capital improvements, and the money is no longer there, and there was no way for them to continue to collect that money. Thank you.

(The Chair recognized Sen. Burling.)

SENATOR BURLING: Would this be an appropriate time to offer my floor amendment?

PRESIDENT LARSEN: It is.

Sen. Burling, Dist. 5

January 15, 2008

2008-0101s

06/05

Floor Amendment to HB 754-FN

Amend the bill by replacing all after section 2 with the following:

3 New Section; Fund Established. Amend RSA 234 by inserting after section 65 the following new section:

234:66 Fund Established. Any and all funds received by the department of transportation relative to the Portsmouth Kittery Bridge, also known as the Sarah Mildred Long Bridge, shall be deposited with the state treasurer who shall keep such funds in a special nonlapsing account known as the Portsmouth-Kittery Bridge fund, to be continuously appropriated and expended by the department of transportation for the purpose of operations, maintenance, and repairs of the Portsmouth-Kittery Bridge.

4 New Subparagraph; Portsmouth-Kittery Bridge Fund. Amend RSA 6:12, I(b) by inserting after subparagraph (252) the following new subparagraph:

(253) Moneys deposited in the Portsmouth-Kittery Bridge fund under RSA 234:66.

5 Betterment Fund Use. The department of transportation may expend betterment funds for repairs to the Sarah Mildred Long Bridge.

6 Dissolution of the Maine-New Hampshire Interstate Bridge Authority. The Maine-New Hampshire Interstate Bridge Authority shall dissolve 6 months after the United States Congress approves this act during which time it shall wind up all its affairs.

7 Assignment of Assets. The Maine-New Hampshire Interstate Bridge Authority shall assign all assets to the state of Maine and the state of New Hampshire in common. All funds assigned shall be deposited in accordance with RSA 234:66 after the United States Congress approves this act. Thereafter, the respective state transportation agencies shall assume all maintenance, operation, and repair responsibilities from the Maine-New Hampshire Interstate Bridge Authority.

8 Effective Date. This act shall take effect upon its passage.

2008-0101s

AMENDED ANALYSIS

This bill:

I. Repeals the law relative to the Maine-New Hampshire Interstate Bridge Authority and the Portsmouth-Kittery Bridge also known as the Sarah Mildred Long Bridge.

II. Requires the department of transportation to deposit funds received relative to the bridge with the state treasurer.

III. Dissolves the Maine-New Hampshire Interstate Bridge Authority and requires the respective state transportation agencies to assume the responsibilities of the Authority.

This bill is a request of the department of transportation.

SENATOR BURLING: Thank you, Madam President. May I speak to it while it's being distributed?

PRESIDENT LARSEN: You may speak to Floor Amendment 101 as it's being distributed.

SENATOR BURLING: In the course of our discussion, the Committee, under the able guidance of our chairman, took a vote on the bill as originally introduced. A subsequent telephone call from the Department of Transportation led me to ask myself the following question: Does the bill as drafted, with its effective date in June, give us early enough access to the repair authority in order to meet the needs of this bridge? And my concern was accelerated by the fact that just before Christmas, as the woman who runs the bridge was attempting to raise the bridge for a ship coming in, the bridge, operating on its primary elevator system, jammed. And she was, thank goodness, able to clear it using the secondary system anyway. What we had been worrying about happened. And the good part is the bridge wasn't that much out of alignment so that the jam wasn't a real threat, it was cleared. But that caused me to contact the Department of Transportation and to ask them if they were confident the text of the bill gave them access quickly enough so they could start fixing it. When they actually looked at the text again, they said no. I referred them to the Department of Justice, asked Bud Fitch the same question, and unfortunately, after our committee had acted, Bud came back with this language, which essentially addresses the problem, is how do we get DOT most quickly in power over this bridge? I'm assured by the Department of Justice that adoption of this amendment will allow the DOT to move immediately to repair as soon as the Governor signs this bill. So, I would ask you please to join me in supporting this amendment, and we'll finally get to where we need to be with regard to this bridge.

(The Chair recognized Sen. Kenney for a question of Sen. Burling.)

SENATOR KENNEY: I am learning as I'm going here, Sen. Burling. But this bill would repeal Section 234:65. And as I understand that section, there are members of this, or I should say "employees" of this Interstate Bridge Authority who were part of the New Hampshire Retirement System as of 1985, I believe. Could you give us an update on those employees? How many might be in the system, and what the effect of this repeal would have on them, as far as that section of the law?

SENATOR BURLING: In all candor, no, I cannot definitively. I can't tell you what their retirement system situation is. I can't even tell you – I think there are but two or three employees left in the system, in addition to the three trustees. But I just am not in a position to respond.

SENATOR KENNEY: Thank you.

(The Chair recognized Sen. Burling.)

SENATOR BURLING: May I just clarify my answer? It has been pointed out to me by Sen. Gatsas that, in fact, the bill methodology speaks to your question, Sen. Kenney. They remain as state employees.

SENATOR KENNEY: Thank you.

(The Chair recognized Sen. Clegg to speak.)

SENATOR CLEGG: Thank you, Madam President. I rise in opposition not to just the floor amendment, but to the whole premise that we would take this bridge. I live in a section of the state that's been looking for a bridge across the Merrimack River for convenience so we don't put so many people through the center of Nashua, for many years. And we're always told that there's no money, we can't have it. "Well, maybe you

can put a toll on it.” In fact, it’s been so difficult that there’s actually a bill running through the Legislature that looks at perhaps private financing. No matter how we do it, it comes with a toll. This bridge had a toll, it had the ability to continue to collect funds, and since we have the argument constantly that Hudson and Litchfield would pay the dollar simply for the convenience and the savings of gas, I’m going to use it on the Sarah Long Bridge. If that’s the case for the Southern tier, it should be the case for the Seacoast. For the convenience of those 14,000 people that travel to the shipyard or wherever it is that they go, put a toll up so that they can pay for the bridge. What we’ve done is we’ve seen people neglect a fiduciary responsibility in the Authority, allow the bridge to deteriorate while they ran all the money out, and now they’re handing it to us.

We bonded \$20 million this year in Capital Budget to do some bridge repairs and other repairs across the State of New Hampshire, and suddenly we’re going to take the responsibility of another \$20 million bond, or another \$20 million expense, and there’s no reason for it. It shouldn’t jump in line. I look at this, and on section 5, and it appears to me that we’re allowing this bridge to jump ahead of every other project that we have. It says they can take the Betterment Fund and use it to repair the Sarah Long Bridge. What about the repairs to all the other bridges and all the other communities that have been waiting all this time? To take this bridge and to take on the responsibility at the expense of everywhere else, and all the people who have been waiting, is not the proper way to do things here. We have a 10-year Highway Plan which has been reduced, and now we have one bridge nobody cared about, and now they want to stick it to us. And I advise my – or I ask my colleagues to vote no, not only for the amendment, for the principle of what’s happened, but also “no” on the entire bill. Thank you, Madam President.

(The Chair recognized Sen. Gatsas to speak.)

SENATOR GATSAS: Thank you, Madam President. I guess I’ve just gotta stand and be in opposition to this and try and remind everybody what we did last year in June. We passed the Capital Budget. Some of you passed the Capital Budget bill, some of us voted against it. It took a penny out of Betterment. It took Betterment from 22 million to 15 million. This piece of legislation, which puts no cap on what can be taken out of Betterment, could possibly take the 15.6 that’s left. And let me tell you the projects that this Betterment account is supposed to pay for: Loudon and Belmont: paving intersection and signal work, 4.5 million; Wakefield: intersection, 2 million; Enfield: shoulder work, 1 million; Bethlehem/Bartlett: guardrail, 800,000; Milford: signals, 300,000; Hopkinton: bridge rehabilitation, 1.5 million; Dover, 4.5 million; Lisbon: 1.5 million. That’s 15.6. that’s the end of the Betterment account. I guess my question is, what projects in this chamber do we want to eliminate that these communities have been waiting for?

There’s no question the Sarah Long Bridge is important. But we shouldn’t be obligated to take Betterment money out of projects that are in line and ready to go when we’ve already reduced it, because if we had the 7.5 million that we took out to pay for the bonding of the \$20 million in bridges that we did, that would make a difference. I don’t think that DOT was aware of the amendment that came in that talked about the Betterment account being a possibility of paying for this bridge. And I don’t know if Mr. Brillhart’s still here, but he was here. Yes, he is. So I think when he heard about the amendment, he came running over.

So I think it's important that we understand that that \$15.6 million in projects is not going to go forward. So I ask you to remember what we did with the Betterment account in June, or in May, and where we are today. Thank you, Madam President.

(The Chair recognized Sen. Barnes for a question of Sen. Gatsas.)

SENATOR BARNES: Sen. Gatsas, I couldn't agree with you more. And do you think that the idea of having the federal government taking care of this, instead of the State of New Hampshire, is a good idea?

SENATOR GATSAS: There's certainly no question that I believe the federal government should be paying for it, but I don't know if I want to depend on waiting to do this and take the transfer, and wait for the federal government to come in and pay for it, because that could be whenever. And I'm certainly not opposed to the idea of Sen. Clegg, that a toll go back up and pay for that bridge.

SENATOR BARNES: Thank you, Senator.

Recess/Out of Recess.

The question is on the adoption of Floor Amendment 0101s on HB 754-FN.

(The Chair recognized Sen. D'Allesandro to speak.)

SENATOR D'ALLESANDRO: Thank you, Madam President. I rise to speak in favor of the amendment. Let's first discuss the Betterment funds, because I think that's an important issue in this discussion. The Betterment Fund will be tapped to the tune of \$500,000. Those Betterment funds will be used to repair the electric mechanism to raise and lower the bridge. The raising and lowering of the bridge is a vital component to the support of the Portsmouth Naval Shipyard. The Portsmouth Naval Shipyard employs thousands of New Hampshire residents. Those are the best-paying, best-benefited jobs that we have in this state. The federal government has tried on numerous occasions to eliminate the Portsmouth Naval Shipyard. Anything that's done that in any way enhances that argument on behalf of the federal government is an economic disaster for New Hampshire and the State of Maine. The \$500,000 that's extended out of the Betterment Fund for the repair of the electrical system, \$200,000 will be replaced by the shipyard. There's a \$400,000 commitment that would be given: 200,000 to Maine and 200,000 to New Hampshire. So the actual amount of money expended after this is done would be \$300,000.

Now, let's talk about cost benefit ratios. Cost benefit ratios. We spend \$500,000 to save the jobs of thousands of people working at the shipyard. We put a strong statement for the national security of our country, because the shipyard is vital. It's vital to the international situation as it relates to the defense of America. And as I say, we're entering a period of economic decline. I don't think there's any question about that. It's nationwide. So anything that we can do to maintain this economic viability is in the best interest of the people of our state and really the people of our country. Are we moving some money? Yes. Are we making this decision because it's in the best interest of our state? I believe so. Every one of us is compelled at certain times to make tough decisions. And when we make those tough decisions, we have to place the goodwill of the body before the benefit of our local communities. And all of us, over the course of the Highway Plan, have suffered some losses. But this commitment is for the benefit of the whole. And that's why we're here. I

mean that's why we're public servants, because we do our best to support the whole. This is a good investment. I've talked with the Commissioner, the acting Commissioner. He's aware of this. He's aware of this, he knows the importance of this, and it's from him that I got the numbers. So, let's think about New Hampshire first. Let's think about our country first, and let's move forward. Thank you, Madam President.

(The Chair recognized Sen. Odell to speak.)

SENATOR ODELL: Thank you, Madam President. There's been some compelling arguments on both sides of this, this morning. And I think the two concerns I have is that we here are making decisions on sort of a one-by-one basis when we deal with this single bridge amongst all the bridges that are in need across the State of New Hampshire. And I'm not sure that I feel as comfortable as others might, even though this is a very unique situation, that that's the role that we play as a legislative body here. The other thing that rings true today to me, is the statement of our Governor in February of last year, when he was talking about the Highway Fund in that case, and he said, "You know, let's stop using that as an ATM." And I think that the precedent we're setting here today makes me very uncomfortable. Thank you.

(The Chair recognized Sen. Gatsas for a question of Sen. D'Allesandro.)

SENATOR GATSAS: Senator, I certainly respect that you got those numbers from the Commissioner, but they aren't in legislation, and would you have a problem tabling this so that we could put a cap. 'Cause this is not about the bridge, this is about spending. And I certainly understand what you've been told, but if we are going to do something to the effect that two hundred or three hundred thousand is coming into Betterment, why wouldn't we table this and make sure that it doesn't take the full fifteen-six out of Betterment?

SENATOR D'ALLESANDRO: The \$15.6 million.

SENATOR GATSAS: Million.

SENATOR D'ALLESANDRO: I would defer to the sponsor, if he's in accord with that. The best information I have from the acting Commissioner is that this is a \$500,000 expenditure, and of that 500,000, the money coming back from the shipyard, the \$400,000, would be \$200,000 for Maine and \$200,000 for New Hampshire. So again, Senator, that's an excellent point. I defer to the sponsor of the bill. But of course, you know, it's all about trust, and we must trust one another and we must trust information, and we do the best we can to present that. We go to the source and we ask the source, and I bring to you the best information that I have, that I have received directly from the Commissioner.

(The Chair recognized Sen. Estabrook for a question of Sen. Burling.)

SENATOR ESTABROOK: In response to the concerns Sen. Odell raised, isn't it true that we need to act differently with regard to this bridge than all other bridges, in that without this legislation we won't be able to access the federal funds that we could access with the legislation?

SENATOR BURLING: Thank you for the question, Senator. That is, of course, exactly correct. We are looking to the federal government for a substantial contribution towards this short-term repair, the immediate fix. Unless we have repair authority in the hands of the State of New Hampshire Department of Transportation, we can't access those funds. So that's part of the motivation we're about here. The other thing, I am going to ask for something in a minute, but I would like to respond to

my colleague, Sen. D'Allesandro, just to say I think he put his finger right on it. We are talking about "trust." These are "trusted" officers of the State of New Hampshire. They're trying to help us out of a mess. Are we suddenly saying we don't believe them? With that, I might ask for a two-minute recess to address the question raised by Sen. Gatsas.

Recess/Out of Recess.

The question is on Floor Amendment 0101s on HB 754-FN.

(The Chair recognized Sen. Gatsas to speak.)

SENATOR GATSAS: Thank you, Madam President. For a second time, I certainly would ask my colleague, Sen. Gottesman, who's the chairman of the Rules Committee, to call for a quickened Rule Committee session so that we can – and I'm not a person with resolutions, but that we bring forward a resolution and send it to our congressional district, to our two senators and our two congressmen, that would stress the necessity of the federal government putting up the money for the Sarah Long Bridge. So I would ask Sen. Gottesman if whatever happens here, that we ask the federal government to send the check. Thank you, Madam President.

(The Chair recognized Sen. Gottesman to speak.)

SENATOR GOTTESMAN: I'd just like to respond. Thank you for calling this to my attention, Sen. Gatsas. And you know that the Rules Committee will act with great dispatch on all appropriate actions. Thank you.

(The Chair recognized Sen. Letourneau to speak.)

SENATOR LETOURNEAU: Thank you, Madam President. And I agree that the importance of this bridge is very important. And my opposition to the bill, to begin with, has been how it's financed and the way it's been basically ignored for 36 years. If we can, I would join with my colleagues to support a resolution to our federal government, should we take this bridge over, to do exactly that; to have the feds pick up the tab on this thing, because it is important and a vital part of the transportation infrastructure in New Hampshire and Maine. Thank you.

(The Chair recognized Sen. Burling to speak.)

SENATOR BURLING: Thank you, Madam President. I welcome the chance just to address some of the issues that have been brought up. And I want to say, to begin with, let's state the obvious. This is not a problem which happened in the last nine months. My good friend, Sen. Letourneau, just mentioned the figure of 36 years. Well, it has been 36 years of indifference to, and deferral of, the maintenance of our infrastructure and highway system that has led us to the current situation. We are trying to deal with a crisis that's brought on by our failure to act in an appropriate fashion. This is not the trustees of the Maine-New Hampshire Bridge Authority, this is something *we* need to attend to. First, \$15 million in Betterment funds going into this bridge. No, that's not true. That is a phony argument. It is 500,000 for which we will be reimbursed 200,000. And it is essential work. It is essential work – and I would respond to my good friend, Sen. Odell in this – because so much of our oil comes up that river. The oil doesn't get up if the bridge jams in the down position. If the bridge jams in the up position or is closed by order of an appropriate authority, we put the Portsmouth Naval Shipyard in jeopardy.

Now, I didn't want to get to this discussion because, frankly, I think with relevance to the folks down in Louisiana, who want all of our jobs there in Portsmouth, this is a tentative matter to be discussing, but since it's

out there, let's have a discussion about it. This Legislature has fought like cats and dogs to hold onto the Portsmouth Naval Shipyard. Are we going to give up because we don't have the courage to fix a bridge? Gracious! I sat in the back of that room in Boston with many of you, watching those thousands of people with their elegance and their courage and their determination to confront the United States Navy. And we can't put up \$500,000 to fix a bridge that is essential to their operations? I'm ashamed. This is ... this is so easy. We don't need to be playing partisan politics with this, folks. We really shouldn't. We support the Portsmouth Naval Shipyard. I know that's in the hearts of every one of us. I know you know that's important. And believe you me, no matter whether we come from the North Country or the West Country, or Keene, or anyplace else, the preservation of that shipyard and its critical place in our national security system is of essential interest to all of us.

Five-hundred thousand bucks is what we're talking about to fix a bridge. Why is it important? Because a railroad track goes across it. Why's a railroad track important? Because essential ingredients for the operations of the Portsmouth Naval Shipyard come in only by rail and they go out only by rail. There ain't no other way. We're having a debate here, really, over the last 30 years of how we've managed our infrastructure. And those of us who are new to the majority are standing up and we're saying it is time for us as a group of colleagues to be responsible relative to our system. It's not about: I'm the lord of District 5, I'm only going to respond to *my* repairs. The Enfield Shaker Bridge is about to go down, we need to fix it. I know that. But I know also that we need to do this together. We are 1,300,000 people in a small state, and if we can't begin to address the needs of all our people and a unified system, then we ought to be ashamed of ourselves. This isn't about my district versus your district; this is about all of us. Five hundred thousand dollars from the Betterment Fund when so much of that will be, in fact, replaced with federal money. Yes, we should talk to our federal delegation. Yes, of course they should do better than the grant they're gonna to give us, but that's no reason for us to stall, stop or delay.

I want to say to each of my colleagues that fixing this bridge, preserving the Portsmouth Naval Shipyard and saving the jobs that are over there, will not delay one of your Betterment projects for 30 minutes. It simply isn't going to happen. What it's going to do is we're going to authorize a trusted and valued group of employees at DOT to do their best to address a situation we should have addressed a long time ago. And I, for one, do not call into question their credibility, their determination, their ability to do this, and their willingness to do it in the New Hampshire way, 'cause I know that's what they're going to do. Sen. Sgambati, you looked at me and said, "Which of my district's essential projects is going to go down?" The answer is none. We all have a problem. We all have a desperate situation. The 10-year Highway Plan became a joke in the course of the last three years. A 10-year plan became a 24-year plan for which we had five years' worth of funding. Goofy. This is not a new problem. It's time we started to address this. And this is a first step. We do it together, we do it for responsible reasons, and we do it to save the jobs of our constituents and our place in the national security system. I thank you for your attention. And, Madam President, I think that's all.

(The Chair recognized Sen. Gatsas for a question of Sen. Burling.)

SENATOR GATSAS: Senator Burling, seeing that you brought up that this is a partisan issue, can you – and I think that if, as you stood in the

minority for many years, you certainly wouldn't have allowed anybody to write a blank check. If you can show me where in this amendment it says that only \$500,000 will be spent, because never before have we ever not put a money amount in a bill that that's what we believe was going to be spent. So show me in this amendment that it says only \$500,000. Or you can tell the minority that, please.

SENATOR BURLING: Thank you for the question. Let me respond to it this way. When I was the minority leader in the House, and in my years here in the Senate, I learned to trust when people told me they could do something for a certain amount of money, and that a certain amount of money was what the job was going to take. We're talking about a bridge that was built in 1937. I don't think they can tell us, to the dime, or to a cap, exactly what it's going to cost. But I do tell you that I believe the Department of Transportation, absolutely, when they say it'll be in the range of \$500,000 in Betterment money and that they have every reason to expect that 200,000 of that will be offset by monies coming from the federal government. Total exposure to us: \$300,000. And I, Senator, really in my heart, believe it is a terrible statement of distrust for us now to say to them, you have to accede to our putting a cap when what they're trying to do is deal with a bridge crisis that's of real concern to us. We could cap it at \$500,000 and then find out that we've got wires or cables or gears that are stripped out and we didn't know it, and that'll be another \$35,000. I don't know how that advances, frankly, in the long run, the cause of getting this bridge done and preserving the Portsmouth Naval Shipyard and the jobs that are over there.

SENATOR GATSAS: Senator, and I don't disagree with you, if it's 35,000, we probably won't complain. But if it's five or six million, then those projects that you might have said to Sen. Sgambati might not get cut, because there is no cap, and the bridge that's in Lisbon or in Dover, then we can't sit here and say that those projects won't get cut, because there is not a cap in here. And if it's a \$35,000 number, then they can come back to Fiscal and ask them for more money, or they can come back to this Legislature. But wouldn't you agree if that number exceeds \$500,000, that some of those projects are going to be cut?

SENATOR BURLING: I would agree, answering your last question first, that a minor increase will not affect other projects. But I also believe that it is entirely within our capacity as Senators, and I trust my chairman completely of this, for us to stay in touch on a weekly or monthly basis, if that's required, to see what it's actually costing to get the work done. We have it in our capacity to ask for that information throughout the rest of this winter. And I think, Mr. Chairman, maybe that's something we ought to do. But to hold this up, or to express distrust in the agency that's going to try to do this, is a mistake. And I won't take any more questions.

Sen. Gottesman moved the question.

Without objection, the Chair moved to close debate, with two remaining speakers.

(The Chair recognized Sen. Barnes for a question of Sen. Fuller Clark.)

SENATOR BARNES: Sen. Martha Fuller Clark, I think Sen. Burling gave a very eloquent speech, as he always does. I think everybody in this room understands the importance of that bridge and the Navy Shipyard and the defense of this country. I think we, all 24 of us, agree. Wouldn't you agree, Sen. Clark, that if we, as a group, all 24 of us could vote for

this without any more discussion and move it along, if we put a number in here such as \$500,000? What is so hard about doing that? It's not about trust, it's about good senatorial sense. If we did that, if you, Senator, could come forward and give us that amendment next session, next time we come in here or today, rush it through, I got a hunch you might have a 24-0 vote on it. I think we all agree of the importance. But the \$500,000, I think makes good sense to put a number in here and not a blank check. I think I personally – I can't speak for my other nine colleagues, but I will vote for it if there's a \$500,000 figure in there. Now, Sen. Clark, wouldn't it be nice if you could bring that forward so you could unite this chamber and get all 24 votes?

SENATOR FULLER CLARK: Thank you very much, Sen. Barnes. I believe that the testimony on the floor today is evidence of the intention of this legislation and is our commitment to make sure that we can move this legislation forward as quickly as possible. Because, as you heard, in December we had another bridge jam. I do not believe that it is sensible policy when we all understand what the implications are, we all have been given the numbers that we're talking about in electrical repair. We need to make sure that that can happen as soon as possible. And I trust that the record of this Senate body will stand in defense of that, and that there is not any need to put in a specific cap. Thank you, Senator Barnes.

SENATOR BARNES: Senator, thank you. I'm going to ask for a roll call.

(The Chair recognized Sen. Kenney for a question of Sen. D'Allesandro.)

SENATOR KENNEY: Just a procedural question, Madam President, of Sen. D'Allesandro, if I could. My understanding is that this bill just came out of the Transportation Committee, and I'm in whole favor of the policy, I think that what we're trying to do, we're really fighting over who's going to pay for the reconstruction of this bridge. And is it my understanding that this bill will go to the Finance Committee and they will review those numbers, or is this a straight-shot out of this body here today to go forward?

SENATOR D'ALLESANDRO: Thank you, Sen. Kenney. It would not go to the Finance Committee because there's no appropriation. What the bill calls for are monies that are available. But I would suggest, if we all have concerns about the cost, that this be a mechanism – if I might, Madam President – that the Department of Transportation report to our chairman of Transportation on the bids that are put out and the costs of this project, and give the chairman of Transportation a continual update on the costs and bring those costs back to this body, so that if there is movement, we will be immediately notified as to what those escalations might be. I think that's a very definitive way to control costs. We'll have it right from the get-go, and the chairman of our Transportation Committee could report back to this body. I think that's the most efficient and effective mechanism with regard to this project. Thank you, Madam President.

(The Chair recognized Sen. Bragdon to speak.)

SENATOR BRAGDON: Thank you, Madam President. I only rise to clarify things, because up until a few minutes ago the discussion had centered around this bridge and the acquisition thereof, and the \$40 million tag, price tag, to do what needs to be done to it, which would hopefully be split between two states. Somehow, this issue of immediate repairs that have to be done came up, and the Betterment Fund came up. And the implication

of some of the statements made earlier were that those of us who may be against this are against the Naval Shipyard and against making these repairs, and shutting things down. And I just want to return to what this discussion was early on, about the State acquiring something that needs \$40 million of work over the long term that probably should have been handled some other way and there are probably other ways to do it. So I don't want my vote against this to be taken as a vote against the jobs at the Shipyard or immediate repairs that need to be made, but the overall principle of what are we getting ourselves into. Thank you.

(The Chair recognized Sen. Burling for a question of Sen. Bragdon who declined to yield to the question.)

(The Chair recognized Sen. Clegg to speak.)

SENATOR CLEGG: Thank you, Madam President. I find it a little disturbing that suddenly we've changed this, as my colleague said, from a discussion about 40 million dollars' worth of problems to one about the people who work at the Naval Shipyard. 'Cause I don't think any of us here worked against the Naval Shipyard. Regardless of what the union over there said, I think all of us here worked very, very hard to maintain the jobs we have there. But if you want to talk about who benefits the most, let's talk about the State of Maine. Maybe we should have cut a deal that said we get a percentage of the income tax that they collect from New Hampshire residents to help pay for the bridge. That might have helped just a little bit more. And why is it that the Naval Shipyard employees are more important than the people who go to work in my district? We don't care about them because they're not working at the Naval Shipyard so we don't need a bridge for them? We only need a bridge for the Naval Shipyard to keep Maine's income tax high. My people go to work. My people go to work in the State of New Hampshire. They work in Manchester. That's one of our cities that we still love. They might even work in Cornish. I don't know if there's anyplace up there to work other than the farm. (Laughter) But regardless, they're entitled, they're entitled to a bridge, too. This is all about what's right and how we manage our highway funds. I don't distrust anybody at DOT. I think they do a good job. But you want to take a half of million dollars and you want to use it to repair a bridge. The last I knew, we bonded \$20 million to do some work, we got a Betterment Fund, and the last I knew, there wasn't one cent left over to do any other work. So where are you going to get the half of million dollars? You're going to spend money that you don't have? Last I knew, that could get the director of DOT thrown in jail. So he's gotta take the money from one of our projects. He's gotta say we won't do this one so we have some money to do Sarah Long Bridge. Or maybe he's going to say we won't do five of the small projects so we have money for the Sarah Long Bridge. And again I'm going to ask you: Why are the people who work at the Naval Shipyard any more important than the people from my community who need the same kind of repairs to go to work? Why aren't we just as important? It takes a whole state? Well, what about us? There's no reason for us to take this on and put it ahead of the pack. We shouldn't be doing it. We shouldn't have done it before, and with the Governor saying that we can't use the Highway Fund as an ATM machine, we ought to be looking at something else; maybe you ought to come in with a bill that says: Here's \$40 million, let's take over the Sarah Long Bridge, and let's pay for it, instead of putting everybody else at a disadvantage. Thank you, Madam President.

(The Chair recognized Sen. Gatsas for a question of Sen. Clegg.)

SENATOR GATSAS: Sen. Clegg, would you believe that what we passed, or what was passed in the Capital Budget for Betterment was \$15 million, and those projects that I just read before total up to \$15.6 million?

SENATOR CLEGG: I would believe that, yes.

SENATOR GATSAS: Thank you.

The question is on the adoption of Floor Amendment 0101s.

A roll call was requested by Sen. Barnes, seconded by Sen. Estabrook.

The following Senators voted Yes: Reynolds, Sgambati, Burling, Cilley, Janeway, Kelly, Gottesman, Foster, Larsen, DeVries, D'Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Kenney, Odell, Roberge, Bragdon, Clegg, Gatsas, Barnes, Letourneau, Downing.

Yeas: 14 - Nays: 10

Floor Amendment 0101s adopted.

The question is on the adoption of Ought to Pass as Amended on HB 754-FN.

A roll call was requested by Sen. Gottesman, seconded by Sen. Barnes.

The following Senators voted Yes: Reynolds, Sgambati, Burling, Cilley, Janeway, Kelly, Gottesman, Foster, Larsen, DeVries, D'Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Kenney, Odell, Roberge, Bragdon, Clegg, Gatsas, Barnes, Letourneau, Downing.

Yeas: 14 - Nays: 10

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

HB 351, clarifying that the definition of "overseas business organization" includes all foreign incorporated business organizations and all 80/20 business organizations, and redefining "business activity" for purposes of the business profits tax. Ways and Means Committee. Ought to Pass with Amendment, Vote 5-0. Senator Janeway for the committee.

Sen. Odell, Dist. 8

November 6, 2007

2007-2628s

09/01

Amendment to HB 351

Amend the title of the bill by replacing it with the following:

AN ACT clarifying that the definition of "overseas business organization" includes all foreign incorporated business organizations and all 80/20 business organizations.

Amend the bill by deleting section 1 and renumbering the original sections 2-4 to read as 1-3, respectively.

2007-2628s**AMENDED ANALYSIS**

This bill clarifies that the definition of “overseas business organization” includes all foreign incorporated business organizations and all 80/20 business organizations.

SENATOR JANEWAY: Thank you, Madam President. As they used to say on *Monty Python’s Flying Circus*: “And now for something entirely different.” (Laughter) I move House Bill 351 ought to pass with amendment. This bill clarifies the definition of an “overseas business organization.” It also redefines “business activity,” to put in statute what is now in Rules, allowing the Department of Revenue to collect business profits taxes from companies with an economic nexus in New Hampshire. For those of you who forget what – as I do – what “economic nexus” means, it means that they do business here, but may not have, or don’t have a physical presence here. The amendment removes section 1 of the bill because “economic nexus” was passed in House Bill 2 last June. The second section of the bill changes certain tax definitions to make them less ambiguous. These sections were requested by the Department of Revenue. Essentially, House Bill 351 makes the terminology in the Business Profits Tax consistent throughout, and agrees with Internal Revenue Code nomenclature regarding overseas business organizations. To anticipate a question from those who may have a longer institutional memory here than I, this is not a sneak tax increase. Please join the Ways and Means Committee in voting this bill ought to pass with amendment. Thank you.

**The question is on the adoption of Committee Amendment 2628s.
Committee Amendment 2628s adopted.**

(The Chair recognized Sen. Foster for a question of Sen. Janeway.)

SENATOR FOSTER: Sen. Janeway, you may have answered my question with the last remarks you made, but there’s another piece of legislation we passed last session where the Commissioner told us it was a technical correction, and the chair, Sen. Odell, and I are trying to sort of address that problem. As far as you know, this is truly a technical question, there’s no deduction or change in taxation; it’s the same “business as usual,” and that we’re just changing definitions to modernize them, but no change in revenue.

SENATOR JANEWAY: That’s correct.

SENATOR FOSTER: ‘Cause I see this doesn’t have a fiscal note, so ...

SENATOR JANEWAY: I pressed the Commissioner on that, given the experience, and was told that your interpretation is correct.

SENATOR FOSTER: Thank you.

The question is on the adoption of Ought to Pass as Amended on HB 351.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

RESOLUTION

Sen. Foster moved that the Senate adjourn from the Early Session, that the business of the Late Session be in order at the present time, that all

bills and resolutions ordered to a third reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

Motion adopted.

Adjournment from the Early Session.

LATE SESSION

Third Reading and Final Passage

SB 158, relative to review of activities affecting surface waters.

SB 199, relative to the assessment of property subject to a housing subsidy restriction.

SB 210-FN, relative to making various changes to the regulation of plumbers and water treatment technicians by the board of licensing and regulation of plumbers.

SB 212-FN, relative to the regulation of home inspectors.

SB 264, relative to creating liens on personal and real property to recover uncollected small claims judgments.

SB 415, relative to the effective date of the compulsory school attendance law.

HB 351, clarifying that the definition of "overseas business organization" includes all foreign incorporated business organizations and all 80/20 business organizations, and redefining "business activity" for purposes of the business profits tax.

HB 754-FN, repealing the law relative to the Maine-New Hampshire Interstate Bridge Authority.

ANNOUNCEMENTS

RESOLUTION

Sen. Foster moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, referring bills to committees, scheduling hearings, sending and receiving messages, and processing enrolled bill reports and amendments.

Motion adopted.

The Senate is in recess to the Call of the Chair.

HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

HB 233-FN-A, specifying compensation for ballot law commissioners.

HB 267, relative to certain small loans.

HB 461, relative to purchasing alliances.

HB 678-FN, establishing a committee to study issues related to cochlear implants.

HB 679-FN-L, relative to delivery of special education services.

HB 683, relative to nominations by party committees.

HB 759-FN, relative to administration and enforcement of banking laws.

HB 766-FN, making changes to the laws relating to special education.

HB 794-FN, establishing a commission to study the feasibility of public funding of state election campaigns.

HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in the passage of the following entitled Bills sent down from the Senate:

SB 45, changing the name of the ballot law commission to the elections and ballot law commission, increasing the membership of the commission, and requiring the commission to propose redistricting plans.

INTRODUCTION OF SENATE BILL(S)

Sen. Foster offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Senate Clerk, Senate legislation numbered from **CACR 33** to **SCR 10**, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

Resolution adopted.

First and Second Reading and Referral

08-2638

CACR 33, Relating To: funding of a public education. Providing That: the legislature shall define standards for education, determine the level of state funding thereof, establish standards of accountability, and allocate state funds in a manner that mitigates disparities in educational opportunity and fiscal capacity, provided that every school district receives a reasonable share of the state funds on a per pupil basis. (Foster, Dist 13; Burling, Dist 5; Fuller Clark, Dist 24; Odell, Dist 8; Bragdon, Dist 11: Judiciary)

08-2694

SB 527, relative to adult involvement for minors seeking abortions. (Sgambati, Dist 4; Odell, Dist 8; Hassan, Dist 23; Cilley, Dist 6; Reynolds, Dist 2; Foster, Dist 13; DeVries, Dist 18; Lasky, Hills 26; Donovan, Sull 4; Pierce, Graf 9; Buco, Carr 1: Health and Human Services)

08-2893

SCR 10, urging the New Hampshire delegation to actively seek an increase in federal funding for wastewater treatment facility improvements. (Cilley, Dist 6; Hassan, Dist 23; Powers, Rock 16; Fargo, Straf 4: Energy, Environment and Economic Development)

HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

HB 267, relative to certain small loans.

INTRODUCTION OF HOUSE BILL(S)

Sen. Foster offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Senate Clerk, House legislation numbered **HB 267**, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

Resolution adopted.

First and Second Reading and Referral

HB 267, relative to certain small loans. (Commerce, Labor and Consumer Protection Committee.)

Out of Recess.

LATE SESSION

Sen. Foster moved that the Senate adjourn from the Late Session.

Motion adopted.

Adjournment from the Late Session.

January 23, 2008

The Senate reconvened at 10:00 a.m., a quorum being present.

The Reverend Canon Timothy Rich, chaplain to the Senate, offered the following remarks and prayer:

Good morning. I saw a bumper sticker just last week that read, "God is not a Republican nor is he a Democrat." Now, beside the fact that I might argue God is neither a "he" nor a "she," I love the reminder. God doesn't sit on one side of the aisle or the other, and although the ways of God are radical, God is neither liberal nor conservative. As you listen to the "State of the State" Address, remember God doesn't applaud simply for one party or another, but rather universally for practices which promote justice and respect the dignity of every human being. Let us pray:

O loving God who presides over the one true "big tent party," we thank You for the many blessings which You have showered upon the state and people of New Hampshire. And we thank You for entrusting those gathered here today with the task of governing. Help these Senators and all who labor in this room to be good stewards of the privilege and blessings You've laid before them; to strive not so much for partisan victories, but rather policies and programs which benefit all of Your people, from the unemployed in Berlin to the retired in Rye. Open their minds and hearts so that the work they do calls forth the best in one another and enables the people of this state to realize the best in themselves. Amen

Sen. Kenney led the Pledge of Allegiance.

Sen. Bragdon is excused for the day.

INTRODUCTION OF GUESTS

Senate Page: Isabel Rollison, Plymouth Regional High School.

Senate Intern: Brandon Rush, NH Senate Research Department.

RESOLUTION

Sen. Foster moved that the Honorable Senate is ready to meet in Joint Convention for the purpose of hearing the "State of the State" Address by his Excellency, Governor John H. Lynch.

HOUSE MESSAGE

The House of Representatives is ready to meet with the Honorable Senate in Joint Convention for the purpose of hearing the "State of the State" Address by his Excellency, the Governor, John H. Lynch.

Motion to meet in Joint Convention adopted.

In recess for Joint Convention/Out of Recess.

PRESIDENT LARSEN: The Senate is out of recess. For information of the Senators and those listening in, those attending, the Senate will reconvene at 1:30 and will begin the Calendar as indicated. So we are reconvening at 1:30, here, for continuation of the Senate Calendar. Thank you all.

Recess/out of Recess.

AFTERNOON SESSION INTRODUCTION OF GUESTS

Dr. Brian Matchett, Military Order of the Purple Heart Adjutant for New Hampshire, and wife Andrea.

Chief Gendron, Hudson Police Department.

Susanna Hargreaves, proponent of Senate Bill 90.

COMMITTEE REPORTS MOTION TO REMOVE FROM THE TABLE

Sen. Cilley moved to have SB 177 removed from the table.

Motion adopted.

SB 177, relative to orders of reparation by the public utilities commission.

The question is on the adoption of Committee Amendment 2499s.

Sen. Reynolds, Dist. 2

Sen. Cilley, Dist. 6

October 12, 2007

2007-2499s

06/09

Amendment to SB 177

Amend the title of the bill by replacing it with the following:

AN ACT relative to orders of reparation by the public utilities commission and penalties against public utilities.

Amend the bill by replacing all after the enacting clause with the following:

1 Reparations. Amend RSA 365:29 to read as follows:

365:29 Orders for Reparation. [~~Whenever~~] ***On its own initiative or whenever a petition or*** complaint has been [~~made to~~] ***filed with*** the commission covering any rate, fare, charge, or price demanded and collected by any public utility, and the commission has found, after hearing and investigation, that an illegal or unjustly discriminatory rate, fare, charge, or price has been collected for any service, the commission may order the public utility which has collected the same to make due reparation to the person who has paid the same, with interest from the date of the payment. Such order for reparation shall cover only payments made within 2 years before the date of ***the commission's notice of hearing or the filing of the petition for reparation.***

2 Penalty Against Utility. Amend RSA 365:41 to read as follows:

365:41 Penalty Against Utility. Any public utility which shall violate any provisions of this title, or fails, omits or neglects to obey, observe or comply with any order, direction or requirement of the commission, shall be subject to a civil penalty, as determined by the commission, not to exceed [~~\$25,000~~] ***\$250,000 or 2.5 percent of the annual gross revenue that the utility received from sales in the state, which***

ever is lower. Such penalties shall be applied to the benefit of the utility's ratepayers, or otherwise in the public interest, as determined by the commission. No portion of any fine, nor any costs associated with an administrative or court proceeding which results in a fine pursuant to this section, shall be considered by the commission in fixing any temporary, permanent, or emergency rates or charges of such utility.

3 Penalty Against Agent. Amend RSA 365:42 to read as follows:

365:42 Penalty Against Agent. Every officer and agent of any such public utility who shall wilfully violate, or who procures, aids, or abets any violation of this title, or who wilfully fails to obey, observe, and comply with any order of the commission, or procures, aids or abets any such public utility in its failure to obey, observe, and comply with any such order or provision, shall be subject to a civil penalty, as determined by the commission, not to exceed ~~[\$10,000]~~ ***\$100,000*** for each violation, ~~[or for each day of a continuing violation].~~ ***Such penalties shall be distributed to the benefit of the utility's ratepayers, or otherwise in the public interest, as determined by the commission.***

4 Effective Date. This act shall take effect 60 days after its passage.

2007-2499s

AMENDED ANALYSIS

This bill requires penalties against public utilities or their agents to be distributed in the public interest.

(The Chair recognized Sen. Cilley to speak to the legislation.)

SENATOR CILLEY: Thank you. I move that SB 177 ought to pass with amendment. The amended bill requires penalties against public utilities and their agents to be distributed in the public interest. The legislation increases the dollar amounts for penalties against utilities. These penalties are compensatory in nature and are designed to help the consumer. Overall, this legislation will strengthen the PUC in certain situations, allowing them to better serve the public interest. I would also point out that these fees are in line with our neighbors around New England. I ask for your support for the Energy, Environment and Economic Development Committee report of ought to pass with amendment, with the understanding that should this motion pass on the floor, a floor amendment will be offered to further clarify penalties that shall be applied fully to the benefit of the public utility customers, either through a credit to bills, or in the event that the credit would be de minimis, on a per-customer basis through the distribution to an account that assist low-income consumers. Thank you. And I ask you to join the Committee in passing this bill.

(The Chair recognized Sen. Gatsas for a question of Sen. Cilley.)

SENATOR GATSAS: Thank you, Madam Chairman. Senator Cilley, I assume that amendment was in last week's Calendar? The amendment that we had in the Calendar of last week, because it doesn't appear in here today. The committee amendment.

PRESIDENT LARSEN: Sen. Gatsas, it was distributed just now.

SENATOR GATSAS: Is this the floor amendment or is this the committee amendment? This is the committee amendment we have here?

PRESIDENT LARSEN: The committee amendment is 2499.

SENATOR CILLEY: In last week's Calendar, am I correct? In January 4th's Calendar.

SENATOR GATSAS: The date on this amendment says "October 12." That's it?

SENATOR CILLEY: That is.

SENATOR GATSAS: Thank you. All right.

PRESIDENT LARSEN: What was distributed was the committee amendment, which also would have appeared if you want to go back to your last week's Calendar. That was a duplicate so you were sure to have it in front of you.

**The question is on the adoption of Committee Amendment 2499s.
Committee Amendment 2499s adopted.**

Sen. Reynolds offered a floor amendment.

**Sen. Reynolds, Dist. 2
January 22, 2008
2008-0190s
06/09**

Floor Amendment to SB 177

Amend the bill by replacing sections 2 and 3 with the following:

2 Penalty Against Utility. Amend RSA 365:41 to read as follows:

365:41 Penalty Against Utility. Any public utility which shall violate any provisions of this title, or fails, omits or neglects to obey, observe or comply with any order, direction or requirement of the commission, shall be subject to a civil penalty, as determined by the commission, not to exceed [~~\$25,000~~] ***\$250,000 or 2.5 percent of the annual gross revenue that the utility received from sales in the state, which ever is lower. Such penalties shall be applied to the benefit of the utility's ratepayers through a credit to bills, or, if the credit is of an amount determined by the commissioner to be insignificant on a per customer basis, to an account for low income ratepayers.*** No portion of any fine, nor any costs associated with an administrative or court proceeding which results in a fine pursuant to this section, shall be considered by the commission in fixing any temporary, permanent, or emergency rates or charges of such utility.

3 Penalty Against Agent. Amend RSA 365:42 to read as follows:

365:42 Penalty Against Agent. Every officer and agent of any such public utility who shall wilfully violate, or who procures, aids, or abets any violation of this title, or who wilfully fails to obey, observe, and comply with any order of the commission, or procures, aids or abets any such public utility in its failure to obey, observe, and comply with any such order or provision, shall be subject to a civil penalty, as determined by the commission, not to exceed [~~\$10,000~~] ***\$100,000 for each violation, [or for each day of a continuing violation]. Such penalties shall be distributed to the benefit of the utility's ratepayers through a credit to bills, or, if the credit is of an amount determined by the commissioner to be insignificant on a per customer basis, to an account for low income ratepayers.***

2008-0190s

AMENDED ANALYSIS

This bill requires penalties against public utilities or their agents to be distributed to the ratepayers.

SENATOR REYNOLDS: Thank you, Madam President. I rise in support of a floor amendment that will be distributed, which is Floor Amendment 2008-0190s, and ask the body to vote in support of the floor amendment. This floor amendment is being offered to simply clarify that any portion of the reparations or penalty that's assessed will go back to the ratepayers without any discretion by the commission, the Public Utility Commission, unless the amount is so insignificant on a per-customer basis, in which case it will go to an account for low-income ratepayers. I would appreciate your support for the amendment. I think this amendment makes perfect sense and allows, administratively, for a few dollars, or a few pennies to go to an account for low-income ratepayers, and I'd appreciate your support. Thank you, Madam President.

The question is on the adoption of Floor Amendment 0190s.

Floor Amendment 0190s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 177.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

Recess/Out of Recess.

MOTION TO REMOVE FROM THE TABLE

Sen. Fuller Clark moved to have SB 259 removed from the table.

Motion adopted.

SB 259, establishing state appliance and equipment energy efficiency standards.

The question is on the adoption of Committee Amendment 0006s.

Sen. Fuller Clark, Dist. 24

December 10, 2007

2008-0006s

03/04

Amendment to SB 259

Amend the bill by replacing all after the enacting clause with the following:

1 New Chapter; Minimum Energy Efficiency Standards for Certain Products. Amend RSA by inserting after chapter 339-F the following new chapter:

CHAPTER 339-G

MINIMUM ENERGY EFFICIENCY STANDARDS FOR CERTAIN PRODUCTS

339 -G:1 Definitions. In this chapter:

I. "Ballast" means a device used with an electric discharge lamp to obtain the necessary voltage, current, and waveform for starting and operating the lamp.

II. "Bottle-type water dispenser" means a water dispenser that uses a bottle or reservoir as the source of potable water.

III. "Commission" means the public utilities commission.

IV. "Commercial hot food holding cabinet" means a heated, fully-enclosed compartment with one or more solid or glass doors that are designed to maintain the temperature of hot food that has been cooked in a separate appliance. "Commercial hot food holding cabinet" does not include heated glass merchandizing cabinets, drawer warmers, or cook-and-hold appliances.

V. "Compensation" means money or any other valuable thing, regardless of form, received or to be received by a person for services rendered.

VI. "Electricity ratio" means the ratio of furnace electricity use to total furnace energy use. $\text{Electricity ratio} = (3.412 \cdot \text{EAE}) / (1000 \cdot \text{EF} + 3.412 \cdot \text{EAE})$ where EAE (average annual auxiliary electrical consumption) and EF (average annual fuel energy consumption) are defined in Appendix N to subpart B of part 430 of title 10 of the Code of Federal Regulations and EF is expressed in millions of BTUs per year.

VII. "High-intensity discharge lamp" means a lamp in which light is produced by the passage of an electric current through a vapor or gas and in which the light-producing arc is stabilized by bulb wall temperature and the arc tube has a bulb wall loading in excess of 3 watts per square centimeter.

VIII. "Metal halide lamp" means a high-intensity discharge lamp in which the major portion of the light is produced by radiation of metal halides and their products of dissociation, possibly in combination with metallic vapors.

IX. "Metal halide lamp fixture" means a light fixture designed to be operated with a metal halide lamp and a ballast for a metal halide lamp.

X. "Probe-start metal halide ballast" means a ballast used to operate metal halide lamps, which does not contain an igniter and which instead starts lamps by using a third starting electrode probe in the arc tube.

XI. "Residential boiler" means a self-contained low-pressure appliance for supplying steam or hot water primarily designed for space heating, which uses natural gas, propane, or home heating oil, and which has a heat input rate of less than 300,000 BTU per hour.

XII. "Residential furnace" means a self-contained space heater designed to supply heated air through ducts of more than 10 inches length and which utilizes only single-phase electric current, or single-phase electric current or DC current in conjunction with natural gas, propane, or home heating oil, and which:

(a) Is designed to be the principle heating source for the living space of one or more residences;

(b) Is not contained within the same cabinet with a central air conditioner whose rated cooling capacity is above 65,000 BTU per hour; and

(c) Has a heat input rate of less than 225,000 BTU per hour.

XIII. "Single-voltage external AC to DC power supply" means a device that:

(a) Is designed to convert line voltage AC input into lower voltage DC output;

(b) Is able to convert to only one DC output voltage at a time;

(c) Is sold with, or intended to be used with, a separate end-use product that constitutes the primary power load;

(d) Is contained within a separate physical enclosure from the end-use product;

(e) Is connected to the end-use product via a removable or hard-wired male/female electrical connection, cable, cord, or other wiring;

(f) Does not have batteries or battery packs, including those that are removable, that physically attach directly to the power supply unit;

(g) Does not have a battery chemistry or type selector switch and indicator light; or does not have a battery chemistry or type selector switch and a state of charge meter; and

(h) Has a nameplate output power less than or equal to 250 watts.

XIV. "State-regulated incandescent reflector lamp" means a lamp, not colored or designed for rough or vibration service applications, with an inner reflective coating on the outer bulb to direct the light, an E26 medium screw base, a rated voltage or voltage range that lies at least partially within 115 to 130 volts, and that falls into either of the following categories: a blown PAR (BPAR), bulged reflector (BR), elliptical reflector (ER), or similar bulb shape with a diameter equal to or greater than 2.25 inches; or a reflector (R), parabolic aluminized reflector (PAR), or similar bulb shape with a diameter of 2.25 to 2.75 inches, inclusive.

XV. "Temperature reset" means an automatic means for adjusting the temperature of the water supplied by a residential boiler such that an incremental change in inferred heat load produces a corresponding incremental change in supply water temperature. When there is no inferred heat load, such automatic means adjusts the supply water temperature to no more than 140 degrees Fahrenheit.

XVI. "Walk-in refrigerator and freezer" means a refrigerated space that can be walked into and has a total chilled and frozen storage area of less than 3,000 square feet, operates at chilled (above 32 degrees Fahrenheit) or frozen (at or below 32 degrees Fahrenheit) temperature, and is connected to a self-contained or remote condensing unit. This term excludes products designed and marketed exclusively for medical, scientific, or research purposes. This term also excludes refrigerated warehouses.

XVII. "Water dispenser" means a factory-made assembly that mechanically cools and heats potable water and that dispenses the cooled or heated water by integral or remote means.

339-G:2 Applicability.

I. The provisions of this chapter apply to the testing, certification, and enforcement of efficiency standards for the following types of new products sold, offered for sale, or installed in the state:

- (a) Bottle-type water dispensers;
- (b) Commercial hot food holding cabinets;
- (c) Metal halide lamp fixtures;
- (d) Residential furnaces and residential boilers;
- (e) Single-voltage external AC to DC power supplies;
- (f) State-regulated incandescent reflector lamps;
- (g) Walk-in refrigerators and freezers; and

II. The provisions of this chapter do not apply to:

(a) New products manufactured in the state and sold outside the state;

(b) New products manufactured outside the state and sold at wholesale inside the state for final retail sale and installation outside the state;

(c) Products installed in mobile manufactured homes at the time of construction;

(d) Products designed expressly for installation and use in recreational vehicles; or

(e) Residential furnaces that use natural gas or propane and that are installed as replacements for previously installed furnaces.

339-G:3 Minimum Energy Efficiency Standards.

I. Bottle-type water dispensers designed for dispensing both hot and cold water shall not have standby energy consumption greater than 1.2 kilowatt hours per day, as measured in accordance with the test criteria contained in Version 1.1 of the United States Environmental Protection

Agency's "ENERGY STAR Program Requirements for Bottled Water Coolers," except that units with an integral, automatic timer shall not be tested using Section D, "Timer Usage," of the test criteria.

II. Commercial hot food holding cabinets shall have a maximum idle energy rate of 40 watts per cubic foot of interior volume, as determined by the "idle energy rate-dry test" in ASTM F2140-01, "Standard Test Method for Performance of Hot Food Holding Cabinets" published by ASTM International. Interior volume shall be measured in accordance with the method shown in the United States Environmental Protection Agency's "ENERGY STAR Program Requirements for Commercial Hot Food Holding Cabinets" as in effect on August 15, 2003.

III. Metal halide lamp fixtures designed to be operated with lamps rated greater than or equal to 150 watts but less than or equal to 500 watts shall not contain a probe-start metal halide ballast.

IV.(a) Residential furnaces and residential boilers shall comply with the following Annual Fuel Utilization Efficiency (AFUE), electricity ratio, and design requirements:

Product Type	Minimum AFUE	Maximum electricity Ratio	Design Requirements
Natural gas- and propane-fired furnaces	90 percent	2.0 percent	none
Oil-fired furnaces $\geq 94,000$ BTU/hour in capacity	none	2.0 percent	none
Oil-fired furnaces $< 94,000$ BTU/hour in capacity	none	2.3 percent	none
Natural gas- and propane-fired hot water residential	82 percent	Not applicable	No standing pilot Temperature reset boilers required
Natural gas- and propane-fired steam residential boilers	80 percent	Not applicable	No standing pilot
Oil-fired hot water residential boilers	84 percent	Not applicable	Temperature reset required
Oil-fired steam residential boilers	82 percent	Not applicable	none

Residential boilers shall only be operable if the temperature reset is installed. AFUE shall be measured in accordance with the federal test method for measuring the energy consumption of furnaces and boilers contained in Appendix N to subpart B of part 430, title 10, Code of Federal Regulations.

(b) The commission may adopt rules to exempt compliance with the residential furnace or residential boiler AFUE standards at any building, site or location where complying with the standards would be in conflict with any local zoning ordinance, building or plumbing code, or other rule regarding installation and venting of residential furnaces or residential boilers.

V.(a) Single-voltage external AC to DC power supplies shall meet the energy efficiency requirements in the following table:

Nameplate Output Power	Minimum Efficiency in Active Mode	Maximum Energy Consumption in No-Load Mode
0 to < 1 watt	$0.49 * \text{Nameplate Output}$	0.5 watts
≥ 1 watt and ≤ 49 watts	$0.09 * \ln(\text{Nameplate Output Power}) + 0.49$	0.75 watts
> 49 watts	0.84	

Where Ln (Nameplate Output) = Natural Logarithm of the nameplate output expressed in watts.

(b) This standard applies to single-voltage AC to DC power supplies that are sold individually and to those that are sold as a component of or in conjunction with another product.

(c) Single-voltage external AC to DC power supplies that require United States Food and Drug Administration listing and approval as a medical device are exempt from the requirements of this section.

(d) Single-voltage external AC to DC power supplies made available by a manufacturer directly to a consumer or to a service or repair facility after and separate from the original sale of the product requiring the power supply as a service part or spare part shall not be required to meet the standards of this section before January 1, 2013.

(e) For purposes of this paragraph, the efficiency of single-voltage external AC to DC power supplies shall be measured in accordance with the test methodology specified in Appendix N to subpart B of part 430, title 10, Code of Federal Regulations.

VI. State-regulated incandescent reflector lamps shall meet the minimum average lamp efficacy requirements for federally-regulated incandescent reflector lamps contained in 42 U.S.C. section 6295 (i)(1)(A). The following types of incandescent reflector lamps are exempt from these requirements:

(a) Lamps rated at 50 watts or less of the following types: BR30, ER30, BR40, and ER40;

(b) Lamps rated at 65 watts of the following types: BR30, BR40, and ER40; and

(c) R20 lamps of 45 watts or less.

VII. Walk-in refrigerators and freezers shall meet the following requirements:

(a) All walk-in refrigerators and freezers shall have:

(1) Automatic door closers that firmly close all reach-in doors and that firmly close walk-in doors no wider than 3 feet 9 inches and no higher than 6 feet 11 inches that have been closed to within one inch of full closure.

(2) Wall, ceiling and door insulation of at least R-28 for refrigerators. Door insulation requirements do not apply to glazed portions of doors, nor to structural members.

(3) Wall, ceiling, and door insulation of at least R-32 for freezers. Door insulation requirements do not apply to glazed portions of doors, or to structural members.

(4) Floor insulation of at least R-28 for freezers.

(5) For single-phase evaporator fan motors of under one horsepower and less than 460 volts, electronically commutated motors. The commission may delay implementation of this subparagraph upon a determination that such motors are only available from one manufacturer or in insufficient quantities to serve the needs of the walk-in refrigerator and freezer industry for evaporator-fan applications.

(6) For condenser fan motors of under one horsepower, either: (a) electronically commutated motors, (b) permanent split capacitor-type motors, or (c) polyphase motors of 1/2 horsepower or more; and

(7) For all interior lights, light sources with an efficacy of 40 lumens per watt or more, including ballast losses, if any. Light sources with an efficacy of 40 lumens per watt or less, including ballast losses, if any, may be used in conjunction with a timer or device that turns off the lights within 15 minutes of when the walk-in is not occupied.

(b) In addition to the requirements in subparagraph (a), walk-in refrigerators and freezers with transparent reach-in doors shall meet the following requirements:

(1) Transparent reach-in doors and windows in walk-in doors for walk-in freezers shall be of triple-pane glass with either heat-reflective treated glass or gas fill;

(2) Transparent reach-in doors and windows in walk-in doors for walk-in refrigerators shall be either (a) double-pane glass with heat-reflective treated glass and gas fill or (b) triple pane glass with either heat-reflective treated glass or gas fill;

(3) If the appliance has an anti-sweat heater without anti-sweat heat controls, then: the appliance shall have a total door rail, glass, and frame heater power draw of no more than 7.1 watts per square foot of door opening for freezers and 3.0 watts per square foot of door opening for refrigerators; and

(4) If the appliance has an anti-sweat heater with anti-sweat heat controls, and the total door rail, glass, and frame heater power draw is more than 7.1 watts per square foot of door opening for freezers and 3.0 watts per square foot of door opening for refrigerators, then the anti-sweat heat controls shall reduce the energy use of the anti-sweat heater in an amount corresponding to the relative humidity in the air outside the door or to the condensation on the inner glass pane.

339-G:4 Sale and Installation of Products.

I. After December 31, 2008, no new bottle-type water dispenser, commercial hot food holding cabinet, metal halide lamp fixture, state-regulated incandescent reflector lamp, or walk-in refrigerator or walk-in freezer shall be sold or offered for sale in the state unless the efficiency of the new product meets or exceeds the efficiency standards in RSA 339-G:3. After December 31, 2009 no new bottle-type water dispenser, commercial hot food holding cabinet, metal halide lamp fixture, state-regulated incandescent reflector lamp, or walk-in refrigerator or walk-in freezer shall be installed in the state unless the energy efficiency of the new product meets or exceeds the efficiency standards in RSA 339-G:3.

II. No single-voltage external AC to DC power supply manufactured after December 31, 2008 shall be sold or offered for sale in the state unless the efficiency of the single-voltage external AC to DC power supply meets or exceeds the efficiency standards in RSA 339-G:3. After December 31, 2009, no single-voltage external AC to DC power supply manufactured after December 31, 2008 shall be installed unless the energy efficiency of the new product meets or exceeds the efficiency standards in RSA 339-G:3.

III. Within 6 months after the effective date of this section, the commission, in consultation with the attorney general, shall determine if implementation of state standards for residential furnaces and residential boilers requires a waiver from federal preemption. The commission shall make separate determinations for each part of the state standards including minimum Annual Fuel Utilization Efficiency (AFUE), maximum electricity ratio, and any prescriptive requirements. If the commission determines that a waiver from federal preemption is not needed for any part, then after December 31, 2008, or the date which is one year after the date of said determination, if later, no new residential furnace or residential boiler may be sold or offered for sale in the state unless the efficiency of the new product meets or exceeds the applicable non-preempted part of the efficiency standards in RSA 339-G:3. If the commission determines that a waiver from federal preemption is required

for all or part of the state standards, then the commission shall apply for such waiver within one year of such determination and upon approval of such waiver application, the applicable state standards shall go into effect at the earliest date permitted by federal law. The commission shall certify any determinations and approvals under this paragraph to the secretary of state and the director of the office of legislative services.

339-G:5 Modified and Additional Standards. The commission may establish more stringent efficiency standards for the products listed in RSA 339-G:2, I; provided no more stringent efficiency standards shall become effective within one year following the adoption of any rules providing for the more stringent efficiency standards. Not less than every 2 years, the commission shall propose to the general court new efficiency standards for products not listed in RSA 339-G:2, I. Standards proposed by the commission shall promote energy conservation in the state and be lifecycle cost-effective for consumers who purchase and use the products. The commission may apply for a waiver from preemption in accordance with federal procedures for those products regulated by the federal government. The commission may adopt rules, pursuant to RSA 541-A, necessary to implement the provisions of this section.

339-G:6 Testing. The manufacturers of products listed in RSA 339-G:2, I shall test samples of their products in accordance with the test procedures established in this chapter or those specified in the state building code as defined in RSA 155-A. The commission shall adopt by rule test procedures for determining the energy efficiency of the products listed in RSA 339-G:2, I if such procedures are not provided for in RSA 339-G:3 or in the state building code. The commission shall adopt United States Department of Energy approved test methods, or in the absence of such test methods, other appropriate nationally-recognized test methods. The commission may adopt updated test methods when new versions of test procedures become available.

339-G:7 Certification and Identification.

I. Manufacturers of new products listed in RSA 339-G:2, I, except for single-voltage external AC to DC power supplies, walk-in refrigerators, and walk-in freezers, shall certify to the commission that such products are in compliance with the provisions of this chapter. Such certifications shall be based on test results. The commission shall adopt rules, pursuant to RSA 541-A, governing the certification of such products and may coordinate with the certification programs of other states with similar standards.

II. Manufacturers of new products listed in RSA 339-G:2, I shall identify each product offered for sale or installation in the state as in compliance with the provisions of this chapter by means of a mark, label, or tag on the product and packaging at the time of sale or installation. The commission shall adopt rules, pursuant to RSA 541-A, governing the identification of such products and packaging, which shall be coordinated to the greatest practical extent with the labeling programs of other states and federal agencies with equivalent efficiency standards. The commission shall allow the use of existing marks, labels, or tags which connote compliance with the efficiency requirements of this chapter.s. With prior notice and at reasonable and convenient hours, the commission may cause periodic inspections to be made of distributors or retailers of new products listed in RSA 339-G:2, I in order to determine compliance with the provisions of this chapter. The commission shall also coordinate with local enforcement agencies regarding inspections prior to occupancy of newly constructed buildings containing new products that are also covered by the state building code.

339-G:9 Enforcement; Penalties. The commission shall cause investigations to be made of complaints received concerning violations of this chapter and shall report the results of such investigations to the attorney general. The attorney general may institute proceedings to enforce the provisions of this chapter. Any manufacturer, distributor, or retailer who violates any provision of this chapter shall be issued a warning by the commission for any first violation. Repeat violations shall be subject to a civil penalty of not more than \$250. Each violation of this chapter shall constitute a separate offense, and each day that such violation continues shall constitute a separate offense.

2 Effective Date. This act shall take effect January 1, 2009.

PRESIDENT LARSEN: Sen. Fuller Clark, if you'd like to speak to that as it's being distributed.

SENATOR FULLER CLARK: I would, Madam President, thank you. I move Senate Bill 259 ought to pass with amendment. This bill establishes energy efficiency standards that certain appliances and equipment must meet in order to be sold or installed in the state. Similar legislation has passed in Massachusetts, Connecticut, Rhode Island, and New York, just to name a few of the contingent states. Vermont is considering the same legislation this session, and federal requirements have also passed but are held up in rulemaking at the moment. There are only two appliances included in New Hampshire's appliance efficiency standard bill that are not covered by neighboring states of Massachusetts and Vermont and are not pre-empted by the federal bill. One is bottle-type water dispensers, which would pay for itself in terms of energy return in three months, or commercial hot-food holding cabinets, which would pay for themselves or however, in a little over a year. The purpose of all these bills, whether in New Hampshire or across the country, is to ensure that consumers are able to buy the most efficient energy products that are on the market, and to phase out over time less efficient products. The law here in New Hampshire will not take effect until January of 2009. After that date, none of the products covered in this bill will be allowed to be sold in New Hampshire, but any existing merchandise in stock may continue to be sold.

You might like to know what are the products that are covered in the bill, since it's quite technical. They are metal halide lamp fixtures, residential boilers, residential furnaces, residential furnace fans, single-volt external power supplies, and state-regulated incandescent reflector lamps, bottle-type water dispensers, commercial hot-food holding cabinets, and walk-in refrigerators and freezers. This bill will benefit both consumers in the state, because it will result in greater energy efficiency, reducing energy consumption across the state, and at the same time, considerably lowering the cost of energy to users of these products. While the initial costs of such products may initially be somewhat higher, the payback period for these products range from three months to less than three years, based on current energy prices. If the price of energy continues to rise, obviously the payback period will be even shorter. After the initial hearings on the bill, concerns were raised about unintended consequences related to certain electronic devices, furnaces and boilers. To address these and other matters, the amendment removes the section regarding DVD players and audio devices, changes the requirements to furnaces and boilers to better align with consumer needs and building practices, gives greater flexibility to the Public Utilities Commission, and makes various small technical changes. With these alterations, the Committee heard from the various parties that greater support had been achieved on this important issue of energy appliance efficiency. Enacting standards

contained in this bill will ensure that New Hampshire consumers are able to easily integrate energy conservation into their daily lives. The Energy, Environment and Economic Development Committee requests your vote of ought to pass with amendment on Senate Bill 259. Thank you, Madam President.

The question is on the adoption of Committee Amendment 0006s. Committee Amendment 0006s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 259.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

HB 460, relative to conservation restrictions to protect public water supplies. Energy, Environment and Economic Development Committee. Inexpedient to Legislate, Vote 3-2. Senator Odell for the committee.

SENATOR ODELL: Thank you, Madam President. I move House Bill 460 inexpedient to legislate. This well-intentioned bill would impose certain restrictions on the disposition by water utilities of land held for resource protection purposes but no longer needed for that reason. The Committee put a great deal of time and effort into this bill with multiple hearings and meetings. At the end of the day the majority of the Committee believes that the present regulatory standards used by the Public Utilities Commission are sufficient to protect ratepayers as well as to ensure that water utilities will be able to meet future customer needs. Please join the Energy, Environment and Economic Development Committee and vote inexpedient to legislate. Thank you, Madam President.

(The Chair recognized Sen. Cilley to speak.)

SENATOR CILLEY: Thank you. Madam President, I would just like to point out that the purpose of this bill was to protect ratepayers from utilities using them as a source of financing for land. The bill is not directed at any one particular utility, but instead intends to change current policy to prevent water utilities from buying land which they claim is needed to develop or protect water resources, but which utility later sells at a profit for shareholders. As you know, public utilities, including regulated water companies, are regulated by the Public Utilities Commission. A utility's rates are developed in part by determining what makes up the utility's rate base, the plants and equipment that are used to provide utility service. For a water utility, rate base would include buildings, a treatment plant and the system of pipes that deliver water, for example. Land is included in rate base when a utility purchases the land for purposes of providing water service not for investment proposed. Placing any asset, including land, in rate base, means that the utility will earn an improved rate of return set by the PUC and rates paid by ratepayers. The utility will also recover all prudently incurred costs from management of the asset, including property taxes and other carrying costs. This bill sought to strike a more equitable balance between ratepayers and shareholders to recognize when ratepayers have paid carrying costs for a number of years that land has been included in the rates. This approach will allow the utility to receive profits from the sale of land which was an important component of the bill. Having said that, there is another bill coming forward that we hope will be seriously considered to achieve the goals of this particular bill. Thank you.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on HB 460.

Motion of Inexpedient to Legislate adopted.

Senators Foster and Gottesman asserted Rule 42 on HB 460.

SB 79-FN-A, relative to court security and court security officers. Finance Committee. Inexpedient to Legislate, Vote 7-0. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you, Madam President. I move Senate Bill 79 inexpedient to legislate. This bill included a \$2 million appropriation for '08 and a \$3 million appropriation for '09. We all recognize the need for improved court security. We give credit to the sheriffs for their efforts in reducing the initial cost of this bill. The initial cost of this bill was \$14 million, for the initial year, and an additional 14 million for each year succeeding. A lot of people worked very diligently to try to find a way to fund this piece of legislation, but unfortunately were simply unable to do so at this point in time. We remain committed to this identified need and will continue to work towards a solution. Sen. Clegg and I will bring forth a bill through Rules that will create a study commission to look at how court security is handled. It is a very significant and very important issue and something that has to be, has to be addressed, but I think has to be looked at. State agencies are now looking at ways to save money, and the Governor has made it clear that he won't accept any new spending bills. The Finance Committee does not recommend passage of this bill. We ask your support for the motion of inexpedient to legislate. Thank you, Madam President.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on SB 79-FN-A.

Motion of Inexpedient to Legislate adopted.

Senators Burling and DeVries asserted Rule 42 on SB 79-FN-A.

SB 90-FN, relative to the penalty for impersonating a law enforcement officer. Judiciary Committee. Ought to Pass with Amendment, Vote 5-0. Senator Clegg for the committee.

Senate Judiciary

January 17, 2008

2008-0147s

04/09

Amendment to SB 90-FN

Amend the bill by replacing all after the enacting clause with the following:

1 Sheriffs and Constables; False Personation. Amend RSA 104:28-a to read as follows:

104:28-a False Personation. ~~[A person is guilty of a misdemeanor if, not being a]~~ **Any person who falsely assumes or exercises the functions, powers, duties, or privileges incident to the office of sheriff, deputy sheriff, state police officer, police officer of any city or town, or any other law enforcement officer or investigator employed by any state, country or political subdivision of a state or country, [he purposely pretends to be or assumes to act as such law enforcement officer or investigator, or if he purposely requests any other person to assist him in any matter belonging to the duty of such law enforcement officer or investigator] or who wears or displays without authority any uniform, badge, or**

other identification by which such sheriff, officer, or investigator is lawfully identified, and with the intent to be recognized as such, shall be guilty of a class B felony.

2 Railroad Police; Impersonating an Officer. Amend RSA 381:12 to read as follows:

381:12 Impersonating an Officer. Any person who impersonates a railroad police officer shall be guilty of a ~~[misdemeanor]~~ **class B felony.**

3 Effective Date. This act shall take effect January 1, 2009.

SENATOR CLEGG: Thank you, Madam President. I move Senate Bill 90 ought to pass with amendment. Senate Bill 90 increases the penalty for impersonating a law enforcement officer from a misdemeanor to a Class B felony. In researching the matter following the public hearing, we learned that a number of other states charge this as a felony as well. The committee members had concerns, though, that someone who was innocently dressed as a police officer for a costume party could be charged. The proposed amendment makes clear that the intent is to charge only those individuals who both dress as a police officer and act without authority with the intention to be recognized as a law enforcement official. The Judiciary Committee recommends that Senate Bill 90 be adopted with the amendment, and asks for your support. Thank you.

(The Chair recognized Sen. Gatsas to speak.)

SENATOR GATSAS: Thank you, Madam President. I urge my colleagues to move this forward, because the reason that we all are elected is to come up here and serve and certainly address constituents' needs and address those in a manner that we believe is the right thing for the State of New Hampshire. I had a constituent from Hooksett that called me, Susanna Hargreaves, her husband is a police officer in Nashua, thought that impersonating a police officer should be a tougher penalty than somebody selling fireworks. So with that, we put a piece of legislation together, and I certainly thank Sen. Foster, the chairman of that committee, because during the process last year, we were looking to get it heard and we couldn't get it heard for various reasons, and he held another public hearing, and I appreciate that. And Susanna came up and testified in that committee, and certainly voiced her opinion, and when we heard that people were out there during Officer Briggs' tough time and trying to raise money for the family impersonating police officers, it certainly said that we should be filing this as a more than just a misdemeanor and as a felony. So I urge my colleagues to move this along. Thank you.

The question is on the adoption of Committee Amendment 0147s.

Committee Amendment 0147s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 90-FN.

A roll call was requested by Sen. Gatsas, seconded by Sen. Letourneau.

The following Senators voted Yes: Gallus, Reynolds, Kenney, Sgambati, Burling, Cilley, Janeway, Odell, Roberge, Kelly, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, DeVries, Letourneau, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.

The following Senators voted No: None.

Yeas: 23 - Nays: 0

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SENATOR D'ALLESANDRO: Thank you, Madam President. I would hope the record would state that Sen. Bragdon had an excused absence and that's why he did not vote on this issue.

PRESIDENT LARSEN: Thank you. Sen. Bragdon was excused at the beginning of session and remains excused throughout the session.

SB 121, relative to preventing strategic lawsuits against public participation. Judiciary Committee. Inexpedient to Legislate, Vote 5-0. Senator Gottesman for the committee.

SENATOR GOTTESMAN: Thank you, Madam President, I move SB 121 inexpedient to legislate. While the intentions behind the introduction of this legislation are admirable, RSA 514 already affords people protection from frivolous lawsuits. No cases reported that so-called "slap lawsuits" were occurring in New Hampshire for which this relief was necessary beyond the available means. No one should be precluded from bringing appropriate legal action, but our legal system, under the present standards, seems to be working well. Therefore, the Judiciary Committee recommends that Senate Bill 121 not be adopted and asks for your support. Thank you.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on SB 121.

Motion of Inexpedient to Legislate adopted.

SB 315, preventing the fraudulent use of the names of financial institutions. Commerce, Labor and Consumer Protection Committee. Ought to Pass with Amendment, Vote 6-0. Senator DeVries for the committee.

Sen. DeVries, Dist. 18

January 9, 2008

2008-0076s

08/09

Amendment to SB 315

Amend RSA 384:67, IV as inserted by section 3 of the bill by replacing it with the following:

IV. For purposes hereof, the term "financial institution" shall mean a bank, as defined in RSA 384-B:1, I, a national bank, a federally chartered savings bank or association, a federally or state-chartered credit union, a mortgage lender as defined in RSA 397-A and 397-B, or an affiliate or subsidiary thereof having a business location in the state of New Hampshire.

Amend RSA 384:69 as inserted by section 5 of the bill by replacing it with the following:

384:69 Jurisdiction. Any individual or business entity that engages in any act or conduct in violation of RSA 384:67 shall be subject to the jurisdiction of the state of New Hampshire. Nothing in RSA 384:67, RSA 384:68, or this section shall limit the authority of the New Hampshire secretary of state to enforce the laws under his or her jurisdiction relating to trade names, trademarks, or service marks.

SENATOR DEVRIES: Thank you, Madam President. I move Senate Bill 315 ought to pass with amendment. This bill would provide the Commissioner of Banking additional authority to prevent the fraudulent use of the names of financial institutions. In recent commentary in proposed rule to address sub prime mortgage problems, the Federal Reserve identified certain types of deceptive advertising that are often used to ensnare

unsuspecting homeowners into predatory loans. Unauthorized use of the names of a consumer's current mortgage lender is one of the deceptive advertising techniques used. This bill was amended to clarify that there is no shifting of the enforcement authorities from the Secretary of State to the Commissioner of Banking. Please join the members of the Commerce, Labor and Consumer Protection Committee in voting Senate Bill 315 ought to pass with amendment. Thank you.

The question is on the adoption of Committee Amendment 0076s. Committee Amendment 0076s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 315.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 369, relative to the towing and storage of motor vehicles. Commerce, Labor and Consumer Protection Committee. Ought to Pass, Vote 6-0. Senator DeVries for the committee.

SENATOR DEVRIES: Thank you, Madam President. I move Senate Bill 369 ought to pass. This bill makes it an unfair and deceptive insurance practice for an insurer to unreasonably refuse payment of storage and towing claims for damage to an insured motor vehicle under the insured's physical damage coverage or property damage liability coverage. This bill was requested by the Commissioner of Insurance. Please join the members of the Commerce, Labor and Consumer Protection Committee in voting Senate Bill 369 ought to pass. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on SB 369.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 408, establishing a committee to study reverse mortgages. Commerce, Labor and Consumer Protection Committee. Ought to Pass with Amendment, Vote 6-0. Senator Roberge for the committee.

**Commerce, Labor and Consumer Protection
January 16, 2008
2008-0124s
05/04**

Amendment to SB 408

Amend the bill by replacing subparagraph I(a) of section 2 with the following:

(a) One member of the senate, appointed by the president of the senate, from the commerce, labor and consumer protection committee.

Amend the bill by replacing section 4 with the following:

4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named senate member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Two members of the committee shall constitute a quorum.

SENATOR ROBERGE: Thank you, Madam President. I move Senate Bill 408 ought to pass as amended. The Committee voted unanimously to support establishing a committee to "study" reverse mortgages, a practice which if established could keep seniors in their own homes. The bill was

amended to reduce from three to one the number of Senators appointed and to ensure that one Senator appointed be a member of this Committee. Please join members of the Commerce, Labor and Consumer Protection Committee in supporting Senate Bill 408. Thank you.

(The Chair recognized Sen. Gatsas to speak.)

SENATOR GATSAS: Thank you, Madam President. I urge my colleagues to move this forward because I believe that this is probably the next sub prime problem that we're going to see on reverse mortgages on seniors. And if we, as a Legislature, don't get our hands around this issue, we're going to find seniors coming and complaining that their homes have been taken from them. And I applaud Sen. Roberge for bringing this forward because it should be studied, and there should be financial implications put in place that we can protect the seniors. Thank you.

The question is the adoption of Committee Amendment 0124s.

Committee Amendment 0124s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 408.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 520-FN-A, requiring the state veterans council to issue a state veterans handbook biennially. Election Law and Internal Affairs Committee. Ought to Pass with Amendment, Vote 4-0. Senator Burling for the committee.

Election Law and Internal Affairs

January 16, 2008

2008-0129s

09/04

Amendment to SB 520-FN-A

Amend the title of the bill by replacing it with the following:

AN ACT requiring the state veterans council to issue a state veterans handbook biennially and making an appropriation therefor.

Amend RSA 115:6, II as inserted by section 1 of the bill by inserting after subparagraph (b) the following new subparagraph:

(c) The state veterans council may accept and expend for purposes of publishing and distributing the state veterans handbook, any donations, grants, bequests, and contributions which become available for such purposes.

Amend the bill by replacing section 2 with the following:

2 Appropriation; State Veterans Council. The sum of \$1 is hereby appropriated to the state veterans council for the fiscal year ending June 30, 2009 for the purpose of publishing and distributing the state veterans handbook under section 1 of this act. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

SENATOR BURLING: Thank you, Madam President. Madam President, I move Senate Bill 520-FN-A ought to pass with amendment. This bill requires the State Veterans Council to issue a state veterans' handbook, at least as often as biennially. The amendment gives the State Veterans Council greater flexibility and power in raising funds to establish and distribute the handbook as well as making various technical changes to

get the process moving. Our state's servicemen and servicewomen need our support as they adjust back to civilian life, and a durable, clear and effective informational handbook about the services that they can utilize is an extremely helpful tool to extend to them. The Election Law and Internal Affairs Committee requests your support in ought to pass with amendment on Senate Bill 520-FN-A. Thank you, Madam President.

**The question is on the adoption of Committee Amendment 0129s
Committee Amendment 0129s adopted.**

**The question is on the adoption of Ought to Pass as Amended
on SB 520-FN-A.**

A roll call was requested by Sen. Hassan, seconded by Sen. Barnes.

The following Senators voted Yes: Gallus, Reynolds, Kenney, Sgambati, Burling, Cilley, Janeway, Odell, Roberge, Kelly, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, DeVries, Letourneau, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.

The following Senators voted No: None.

Yeas: 23 - Nays: 0

**Motion of Ought to Pass as Amended adopted, bill ordered to the
Committee on Finance (Rule 26).**

SB 521-FN, increasing the maximum scholarship amount available from the national guard scholarship fund. Election Law and Internal Affairs Committee. Ought to Pass, Vote 4-0. Senator Cilley for the committee.

SENATOR CILLEY: Thank you, Madam President. I move that SB 521-FN ought to pass. This bill increases the maximum scholarship amount available from the National Guard Scholarship Fund. It is important to note that this fund is financed through the renting out of armories for events and activities, and that this money raised is separate from the General Fund. As the cost of higher and postsecondary education continues to rise, the Committee supports the increase of the maximum amount of the helpful scholarship for our National Guard's men and women. We ask you to join the Election Law and Internal Affairs Committee in passing of this bill. Thank you.

(The Chair recognized Sen. Burling to speak.)

SENATOR BURLING: Thank you, Madam President. I would like to say that we were cognizant and very aware of the fiscal constraints, but I would like to point out that this fund has a significant balance in it and that there's no sense denying people adequate scholarship aid just to have the money in an account that's controlled. So we think this is putting a little money to a very good use. The Committee unanimously supports this.

(The Chair recognized Sen. Barnes to speak.)

SENATOR BARNES: Thank you, Madam President. I can't ask Sen. D'Allesandro for a question because he hasn't spoken, but I'd like to throw it out and ask you and Sen. D'Allesandro's nodding of the head, not to send this to the Finance Committee.

PRESIDENT LARSEN: I have Sen. D'Allesandro to speak next.

SENATOR BARNES: Thank you.

(The Chair recognized Sen. D'Allesandro to speak.)

SENATOR D'ALLESANDRO: Thank you, Madam President. Madam President, based on Sen. Burling's testimony that the fund already exists, and there is no appropriation required for this, we'll waive taking it to the Finance Committee. The money already exists. There's no new revenue needed. When that existing fund – that existing fund gets its corpus from rentals of the armories, so there's no fiscal impact. Thank you, Madam President.

The question is on the adoption of the committee recommendation of Ought to Pass on SB 521-FN.

A roll call was requested by Sen. Hassan, seconded by Sen. Letourneau.

The following Senators voted Yes: Gallus, Reynolds, Kenney, Sgambati, Burling, Cilley, Janeway, Odell, Roberge, Kelly, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, DeVries, Letourneau, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.

The following Senators voted No: None.

Yeas: 23 - Nays: 0

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SCR 7, urging the United States Department of Defense and Congress to restore full services to the Manchester Veterans Administration Hospital. Election Law and Internal Affairs Committee. Ought to Pass, Vote 5-0. Senator Letourneau for the committee.

SENATOR LETOURNEAU: Thank you, Madam President. I move SCR 7 ought to pass. This Senate Concurrent Resolution urges the United States Department of Defense and Congress to restore full service to the Manchester Veterans Administrative [sic] Hospital. New Hampshire is the only state in the union without a full-service hospital and many of our state veterans have to be bused to White River Junction or to Massachusetts to get the treatment they need. Our veterans deserve the very best that we can provide, and restoring full service to the Manchester VA Hospital would be a major improvement for them. I might add that I also asked that many of the Presidential candidates that came through the state to support bringing back a full-service hospital to the State of New Hampshire, seeing we're the only state that has to bus our veterans all over the world. And I will add one more comment, that we had a state Representative here who went on to be a county commissioner, who got ill, and he was in his 80's and his wife was in his 80's, her 80's, and he needed to have some procedures done on a weekly basis, and his wife could not drive him to Boston, and he was required to go to Boston, and I had to do an intervening, an intervention with him in order to get the service he could get right there in Manchester. So this is really a shame. We need to – we need to get this passed and we need to get it down to Congress, and not just have a piece of paper sitting on somebody's desk; we need to all call our federal delegation and implore them to take care of this. Thank you.

(The Chair recognized Sen. Burling to speak.)

SENATOR BURLING: Thank you, Madam President. Just a couple of points I would like to highlight on behalf of the Committee. We heard the most compelling testimony in support of this resolution. The transportation problem confronted by vets seeking treatment, have reached

epidemic proportion. People are traversed across the State of New Hampshire or down to Boston in vans. A failure to arrive at the right time and place to catch a van means that vets now miss their medical appointments for serious things like chemotherapy. Major medical appointments are placed in jeopardy by our inability to provide a transportation system to move them. This is a duty of honor that we owe to the people who have served us, and that was a feeling shared by all of us on the Committee. We talked quite a bit after the vote was taken about how we might communicate this resolution to our federal delegation. All of us are determined to see that if this passes, it is hand-delivered in the most appropriate way. But most of all, every one of us shared a sense that we want the vets who have served us so well to know that we will stand with them when the time comes for them to get medical service. Passage of this resolution is essential, in the view of our Committee.

(The Chair recognized Sen. D'Allesandro to speak.)

SENATOR D'ALLESANDRO: Thank you, Madam President. I share the sentiments of Sen. Barnes and Sen. Burling. As you know, the Veterans Hospital is in Manchester. Sen. DeVries, Sen. Gatsas and I represent this area. One should take note of the fact that we're the only state in the United States that does not have a full-service Veterans Hospital. And at one time we did have a full-service Veterans Hospital. For those of you who have visited the Veterans Hospital in Manchester, you can see the decline in the hospital. You can see what's happened to that building and the deterioration of services that were provided in that building for our veterans. And remember the veterans that were being served were made a commitment by this country: We will take care of your medical needs for the rest of your life. That's a commitment that this country made to these veterans. Now we know that the World War II Veterans are passing at a dramatic rate. We have the Korean Veterans. We have the Vietnam Veterans. We now have an insurgence in Iraq which is producing some very significant physical problems for veterans who are returning, and these veterans need these services, and they need these services dispensed in their own environment. They don't need to travel to Jamaica Plain, Massachusetts; they don't need to travel to White River Junction, Vermont. They need these services rendered here in Manchester.

Now, it's amazing to me that the federal government has spent a fortune creating medical, online medical records, and that Manchester, New Hampshire Veterans Hospital was the prototype for these records. So here we're putting the most sophisticated recordkeeping method in place in a hospital that we're taking away services from. There's an inconsistency there. The consistency that will be brought forth by this resolution is to state to our government, without any equivocation: These veterans were promised something. They were promised medical attention, full-service medical attention for the rest of their lives. That's one promise we can't go back on. I encourage everyone, in a very strong bipartisan fashion, to not only support this resolution, but to be in touch with those who represent us at the federal level and say, categorically, this is an expense that must be made. It has to be made because we are fulfilling a promise that we made. We said serve us, protect us, defend us, and in return we will do the same for you. Thank you, Madam President.

(The Chair recognized Sen. Kenney to speak.)

SENATOR KENNEY: Thank you, Madam President. I would just like to rise and concur with the comments of my colleagues, Sen. D'Allesandro,

Sen. Burling, Sen. Letourneau, and thank Sen. Barnes for bringing this forward with the recommendation from the SVAC Committee, which was instrumental in getting this rolling. First of all, veterans' issues are nonpartisan, and so I've always treated it that way. So it's great to see both support from the Democrats and Republicans on this issue to have a full-service hospital in Manchester. We should never forget our veterans. And when we do remember our veterans, we should never treat them as though they were second-class citizens, particularly when it comes to their healthcare needs. I have some general overview of where we've been and where we are today. In 1998, the VA tried to close the White River Junction Hospital, but it was stopped by the stakeholders. In 1999, without due notice, the VA closed the New Hampshire VA Medical Center as a full-service hospital. In 2000, the VA spent hundreds of thousands of dollars, bought vans and buses with paid drivers to lug veterans down to Massachusetts for care. In the last seven years, tens of thousands of veterans have been lugged to Massachusetts, and the majority only required outpatient care, i.e., eye drops, blood pressure checks, et cetera, that can be done right at the Manchester Hospital. Round trips normally take at least nine hours. Most of the veterans are elderly and the trips are very painful and uncomfortable. The vans get back sometimes after 6 p.m. in the evening, and the veterans have no way to get home because the DAV volunteers' van service starts at 8 a.m. and closes at 4 p.m. 2003, 7,605 veterans taken to Massachusetts where affidavits were collected from over a hundred veterans, and in February of 2004, presented by the DAV to Secretary Principi. After review, he was shocked that the veterans who only required outpatient care were being lugged to Massachusetts. He stated, "Only patients requiring operations followed by intensive care are supposed to go to Massachusetts." He ordered an investigation and the administrators were transferred. In 2004, veterans, lugged like cattle, dropped from 3,137; 4,468, than 2003 [sic]. Senders' and receivers' fees totaled \$360 per veteran, were not transferred back into the hospital accounts, a savings of over \$16 million. The New Hampshire VA Medical Hospital has 55 fully equipped clinics and their outpatient visits has increased from 127,000 to 184,000. Same-day surgeries are done, and the hospital subcontracted 60 beds to the Catholic Medical Center. The New Hampshire VA Medical Center could be full-service again with very little problems. In 2000, veterans' population was about 132,000 in New Hampshire. For Massachusetts, over 92,000 veterans moved and now live in New Hampshire, with the count still at about 132,000. In Massachusetts, in the 2000 count, was 600,080; now it's around 400,000. Sen. Ted Kennedy and all the Massachusetts Congressmen want New Hampshire to stop sending New Hampshire veterans to Massachusetts. New Hampshire can keep its veterans in New Hampshire, and New Hampshire is the only state, as indicated before, without a full-service VA hospital. Millions of dollars of taxpayers' money is being sent -spent needlessly, to lug veterans to Massachusetts.

And everybody in this room and in the Legislature knows that there's been a group of legislators that created a VA medical task force. We have heard endless of hours of stories about how veterans want to see a full-service hospital, and there have been horrendous stories, and I'm only going to give you one story just recently. A gentleman who needed prostate surgery from Conway was diagnosed at the VA Medical Center in Manchester. He was then - a letter was sent for him for an appointment down at Jamaica Plains. He traveled for many, many hours to

an answer back from any of them; however, I know they were very busy. I did have a chance to talk to one, because I happened to have been with him on a few occasions, and he guaranteed me that he was 120 percent in favor of it, but we never did get a letter, and I can understand that. These gentlemen and the lady that's running were very busy. But to me, this is a very important issue. Both of these resolutions are very, very important. I really would love it if everybody in here could get together and write a letter to their congressional delegations. This issue, both of these issues are very important. This issue on the POW/MIA was brought to my attention by Kenny Leidner about two years ago, and I didn't believe Kenny. I says, "Kenny, you got to be kidding me. What are you talking about? We're flying the POW/MIA flag." And you know what we did last year, the bill that I put together came out a lot better from the other body and we passed, it's over all the state buildings, the POW flag. And I did some checking. As a matter of fact, I sent four letters out. Guess what? I didn't get any answers back from four individuals. I'm not going to mention their names. They couldn't explain to me, they didn't want to explain to me, why this happened. It was a political move, in my opinion, in Washington. I'm not blaming any one party or any one individual. But it's a disgrace to have taken the POW/MIA thing out of the vernacular. Disgrace. And I am totally upset about that, as you probably can tell. I don't get upset too often, but today, I'm upset about this, that's why we brought that forward. And I really appreciate all the help that you folks are giving on this. But as much as the 23 of us, and it's going to be 24 when we have our missing colleague back, I'm sure we'll bring these up next week and so he'll be able to vote on it, if the Senate President goes along with that. And I also want to make mention, and I gave testimony in the committee, I think on each of these pieces of legislation, there's only 22 or 21 Senators' names on there. That didn't mean that there were two or three Senators that didn't want to go along with this; it just meant that in the busyness of up here they missed the chance to sign on. Nobody came to me and said, "Jack, we don't want to be on this darn thing." So I'm sure all 24 of you, of us, would have been on it if that opportunity was there, but it just got bypassed. But these are very important and I don't want to see them go in the trash can. That hospital is so darn important. Sen. Hassan and I presented these bills to the State Veterans Advisory Council, and there's about 15 people sitting around the table, and our good friend the "doc" up there, and there was a unanimous: Yes, Sen. Hassan, Sen. Barnes, go for it. We certainly would appreciate your help on this. And if somebody smarter than I, perhaps our lady here who's taking pictures with her press releases, could get something out into the newspapers from this Senate Chamber, if the Senators agreed, to get the people activated out there in New Hampshire. Those 132,000 veterans, let's get them on e-mails to the congressional delegations. Let's get the delegation's e-mail addresses out to the people in the newspaper. Let's push. Let's push so these people might wake up to the fact that we mean business and would like something to happen. And I want to thank all of you for your help on these. They're very important to a lot of people. With that, I will close and say "Good luck."

The question is on the adoption of committee recommendation of Ought to Pass on SCR 8.

A roll call was requested by Sen. Burling, seconded by Sen. Barnes.

The following Senators voted Yes: Gallus, Reynolds, Kenney, Sgambati, Burling, Cilley, Janeway, Odell, Roberge, Kelly, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, DeVries, Letourneau, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.

The following Senators voted No: None.

Yeas: 23 - Nays: 0

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 300-FN-A, relative to death benefits for corrections officers killed in the line of duty. Executive Departments and Administration Committee. Ought to Pass, Vote 5-0. Senator Kelly for the committee.

SENATOR KELLY: Thank you, Madam President. I move SB 300-FN ought to pass. This bill allows correction officers killed in the line of duty to be eligible for death benefits. Correction officers are subjected to very dangerous situations as part of their duties in providing protection and service for the State of New Hampshire. We believe it is only reasonable to provide some security for their spouses and family. I ask you to join the Executive Departments and Administrative [sic] Committee and to support SB 300-FN. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on SB 300-FN-A.

A roll call was requested by Sen. Gottesman, seconded by Sen. Barnes.

The following Senators voted Yes: Gallus, Reynolds, Kenney, Sgambati, Burling, Cilley, Janeway, Odell, Roberge, Kelly, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, DeVries, Letourneau, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.

The following Senators voted No: None.

Yeas: 23 - Nays: 0

Motion of Ought to Pass adopted, bill ordered to Committee on Finance (Rule 26).

SB 316-FN, expanding a death benefit for police officers and firefighters to emergency medical technicians. Executive Departments and Administration Committee. Ought to Pass, Vote 5-0. Senator Burling for the committee.

SENATOR BURLING: Thank you, Madam President. I move Senate Bill 316-FN ought to pass. This bill expands the death benefit currently available for police officers and firefighters killed in the line of duty to emergency medical technicians killed in the line of duty. EMT providers work side by side with fire and police on a daily basis to protect and serve the citizens of New Hampshire. This legislation assures the protection for all-level EMT's who provide emergency service to our cities and towns. Let us unite the public service branches as equals. Please join the ED&A Committee in its recommendation of ought to pass. Thank you, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass.

A roll call was requested.

Recess/Out of recess.

The question is on the adoption of the committee recommendation of Ought to Pass on SB 316-FN.

A roll call was requested by Sen. Gottesman, seconded by Sen. Barnes.

The following Senators voted Yes: Gallus, Reynolds, Kenney, Sgambati, Burling, Cilley, Janeway, Odell, Roberge, Kelly, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, DeVries, Letourneau, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.

The following Senators voted No: None.

Yeas: 23 - Nays: 0

Motion of Ought to Pass adopted, bill ordered to Committee on Finance (Rule 26).

SB 350-FN, extending the surcharge on probate court entry fees to judicial branch family division cases which would previously have been brought in probate court. Judiciary Committee. Ought to Pass, Vote 5-0. Senator Clegg for the committee.

SENATOR CLEGG: Thank you, Madam President. I move Senate Bill 350 ought to pass. Senate Bill 350 extends the surcharge on Probate Court entry fees to the Family Division. These fees were established back in 2002 as a \$5.00 surcharge in order to pay for mediation services. All of the mediation services are now contained within the Office of Arbitration and Mediation. The courts are attempting to make this office self-funded. This legislation does not establish a new fee, but moves the fees automatically from the Probate to the Family Division as they expand statewide. The Judiciary Committee recommends the legislation be adopted and asks for your support. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on SB 350-FN.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 370, relative to emergency powers of the supreme court. Judiciary Committee. Ought to Pass, Vote 5-0. Senator Foster for the committee.

SENATOR FOSTER: Thank you, Madam President. I move SB 370 ought to pass. This legislation is similar to SB 109 which was passed by the Senate last year, amended by the House, and then ultimately vetoed by the Governor. In his veto message Governor Lynch remarked the Senate's language would have been acceptable, and so we're trying again here. The Governor didn't have an issue with the intent of the legislation, but only with concerns about separations of powers as the way it was drafted. What the legislation does, as we drafted it, is if the Governor were to declare a state of emergency, the courts could, in effect, piggyback on top of that and suspend certain statutes and rules like, for example, statutes of limitations, if there's a horrible snow storm you can't get to the courts and deadlines are running, they can, in fact, extend those deadlines; the Legislature has the right to terminate those, and they can only be extended under limited circumstances. So, once again, the Judiciary Committee recommends that the legislation be adopted and asks for your support. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on SB 370.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 447, eliminating obsolete provisions regarding pleas by mail and noncomputerized courts. Judiciary Committee. Ought to Pass, Vote 5-0. Senator Gottesman for the committee.

SENATOR GOTTESMAN: Thank you, Madam President. I move SB 447 ought to pass. This legislation eliminates some obsolete provisions regarding pleas by mail and noncomputerized courts. The court system in New Hampshire is rolling out the Odyssey system statewide, and there are no longer any noncomputerized courts. However, the only way to rid the statutes of obsolete references is to pass this legislation. Therefore, the Judiciary Committee recommends that Senate Bill 447 be adopted and asks your support. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on SB 447.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 488, relative to jurisdiction of the probate courts and superior courts. Judiciary Committee. Ought to Pass, Vote 5-0. Senator Clegg for the committee.

SENATOR CLEGG: Thank you, Madam President. I move Senate Bill 488 ought to pass. This legislation deals with the jurisdiction of Probate and Superior Courts in New Hampshire. In very simple terms, the bill enables some cases to be dealt with in the same Probate Court that the trust or estate is being heard, rather than having to leave that court and go to other courts, causing delays, additional expenses and unnecessary duplication of services. The Judiciary Committee feels that this legislation is a step forward in efficiencies and enables the courts to provide better services to our citizens. We therefore recommend that Senate Bill 488 be adopted. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on SB 488.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 377, relative to the application of the prudent investor rule to town trust funds. Public and Municipal Affairs Committee. Ought to Pass, Vote 5-0. Senator Burling for the committee.

SENATOR BURLING: Thank you, Madam President. Madam President, I move that Senate Bill 377 ought to pass. This bill extends the application of the prudent investor rule to town trust funds. It creates an option for trustees of these funds to invest to a higher –excuse me, the voice is going – to a higher standard, allowing them to better accomplish the mission of the trust fund. The option can only be used after notification to the Attorney General's Office and hiring of a professional investment advisor, and the bill has the support of both the New Hampshire Bankers' Association and the Attorney General's Office. The Public and Municipal Affairs Committee requests your support for ought to pass on Senate Bill 377. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on SB 377.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 431, naming a small impoundment in Goffstown as Namaske Lake. Public and Municipal Affairs Committee. Ought to Pass, Vote 6-0. Senator Roberge for the committee.

SENATOR ROBERGE: Thank you, Madam President. I move that Senate Bill 431 ought to pass. This bill names an impoundment along the Piscataquog River which lies primarily in Goffstown as Namaske Lake. This body of water has never been named and the area citizens chose the word "Namaske" because it is a form of the word "Amoskeag" meaning "fishing spot." The Public and Municipal Affairs Committee asks your support on Senate Bill 431.

SENATOR D'ALLESANDRO: Thank you, Madam President. I rise just to thank my colleagues. The constituents who brought this to my attention live in the Danesville – Danis Park area, the Lynchville/Danis Park area of Goffstown, and they've undergone some very significant problems with the most recent floods, so this was an opportunity for them to name the body. It was supported by the selectmen, supported by all of, all of our constituents, and gives them a real sense of pride in the restoration work that's taken place in that area, and it's really a "feel-good" thing for them. So I thank my colleagues for their prompt attention to this matter in a very bipartisan fashion. Thank you, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on SB 431.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 461, relative to accessibility of genealogical records to the public. Public and Municipal Affairs Committee. Ought to Pass, Vote 6-0. Senator Sgambati for the committee.

SENATOR SGAMBATI: Thank you, Madam President. I move Senate Bill 461 ought to pass. The bill clarifies and updates the law regarding vital records, and it talks about – and it dictates when a vital record can become part of the public domain. It was requested by the Department of State. It helps the genealogists, but it also allows the State to come in line with new national law regarding these records while also maintaining privacy. The Public and Municipal Affairs Committee requests your support for the motion of ought to pass, ought to pass on Senate Bill 461. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on SB 461.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 303-FN, relative to special number plates. Transportation and Interstate Cooperation Committee. Ought to Pass, Vote 5-0. Senator Clegg for the committee.

SENATOR CLEGG: Thank you, Madam President. I move Senate Bill 303-FN ought to pass. Senate Bill 303 makes the issuance of certain number plates by the – I'm sorry. The Senate Bill makes the changes from "may" to "shall" for the issuance of certain number plates by the director of the Division of Motor Vehicles, and adds active duty members of the armed forces to those eligible for special number plates. Currently in New Hampshire there are a variety of special number plates available to those who have served in the armed services. Special plates available include: honorably discharged veterans have veteran's plates, former POW plates, Purple Heart recipients, Pearl Harbor survivors, and Gold Star mothers. This bill will add active duty members of the armed forces to the list of those that we believe deserve special recognition for the sacrifices they have made on our behalf. Please join the

Transportation and Interstate Cooperation Committee and vote Senate Bill 303 ought to pass. And, Madam President, I would like to speak a second time.

(The Chair recognized Sen. Clegg to speak a second time.)

SENATOR CLEGG: Thank you, Madam President. There was some confusion while we were hearing the bill in the Senate. And I do have to say for the record, that when we deal with these veterans' issues, it's the most bipartisan effort that anyone could ever see. In fact, you wouldn't realize that there were two parties represented in the committees or actually on this floor. And everybody has gone out of their way to make sure, on these issues, especially anything that might honor those who are fighting for us, everybody's gone out of their way to make sure that we do the right thing and we do something extra special. But while we were hearing this bill on the Senate, I received an e-mail from someone who said that there was a certain person from the Department of Safety, on the House side, trying to kill the bill before it ever got out of the Senate. I was more than a little upset, as were the people who were the impetus behind putting this bill in, that suddenly there was a change. What I did was I called Commissioner Barthelmes, and I asked him exactly what the problem was. Well, I told him that we had heard there were too many plates, so we don't want any more; Commissioner Barthelmes assured me that that was not his position, and since he is the Commissioner of the Department of Safety, he wants us to know that he will do whatever needs to be done to honor those veterans who have honorably served us, as well as those people who are currently serving us in the military today. So he has assured me that what was said, supposedly on behalf of the Department of Safety, is not the stance of the Department of Safety, and he *will* allow this plate to move forward so that all of those who are now serving us honorably in the military can have that designation on their vehicle, and once again, we'll be able to say to them, "Thank you" as we see them going down the road. Thank you, Madam President.

(The Chair recognized Sen. Barnes for a question of Sen. Clegg.)

SENATOR BARNES: Senator Clegg, have you gone and talked to the chairman of that committee over in the House and let him know what the – how this is playing out?

SENATOR CLEGG: Senator, I will follow this bill and I will talk to not only the chairman, but every member of that committee and every member of the House that I still know from my eight years over there.

SENATOR BARNES: Thank you.

The question is on the adoption of the committee recommendation of Ought to Pass on SB 303-FN.

A roll call was requested by Sen. Letourneau, seconded by Sen. Barnes.

The following Senators voted Yes: Gallus, Reynolds, Kenney, Sgambati, Burling, Cilley, Janeway, Odell, Roberge, Kelly, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, DeVries, Letourneau, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.

The following Senators voted No: None.

Yeas: 23 - Nays: 0

Motion of Ought to Pass adopted, bill ordered to Committee on Finance (Rule 26).

SB 336-FN, relative to special number plates for veterans who are former prisoners of war. Transportation and Interstate Cooperation Committee. Ought to Pass, Vote 5-0. Senator Clegg for the committee.

SENATOR CLEGG: Thank you, Madam President. I move Senate Bill 336-FN ought to pass. This bill permits persons who formerly served in military operations in Afghanistan or Iraq and were captured and incarcerated during such operations to qualify for the special number plates for former prisoners of war. In the current statute, special number plates for prisoners of war are available for those who have served in a specific list of wars or conflicts or who have met other specific requirements. This bill updates that list of wars or conflicts to include military operations in both Afghanistan and Iraq. Please join the Transportation and Interstate Cooperation Committee and vote Senate Bill 336-FN ought to pass. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on SB 336-FN.

A roll call was requested by Sen. Burling, seconded by Sen. Barnes.

The following Senators voted Yes: Gallus, Reynolds, Kenney, Sgambati, Burling, Cilley, Janeway, Odell, Roberge, Kelly, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, DeVries, Letourneau, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.

The following Senators voted No: None.

Yeas: 23 - Nays: 0

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 490-FN, relative to fees for special number plates for veterans. Transportation and Interstate Cooperation Committee. Ought to Pass with Amendment, Vote 5-0. Senator Letourneau for the committee.

Transportation and Interstate Cooperation

January 17, 2008

2008-0137s

03/10

Amendment to SB 490-FN

Amend the title of the bill by replacing it with the following:

AN ACT relative to fees for special number plates for veterans and relative to vehicle registration fees for disabled veterans and former prisoners of war.

Amend the bill by replacing all after the enacting clause with the following:

I Special Number Plates for Certain Veterans; Fees. Amend RSA 261:86, II to read as follows:

II. Plates furnished pursuant to subparagraphs I(a)-(c) shall be issued without charge. Plates furnished pursuant to subparagraphs I(d) and (e) shall be issued upon payment of the regular registration *fee* and ~~[number]~~ **the \$4 per** plate fees **under RSA 261:75**. Notwithstanding RSA 265:73 or any other law, any person who is issued a plate pursuant to subparagraphs I(c)-(e) shall not be entitled to free parking privileges provided for disabled veterans, except that a person who qualifies for special plates pursuant to subparagraph I(d) may be issued an additional special plate for a motorcycle.

2 Special Number Plates for Veterans; Fee Eliminated. Amend RSA 261:87-b, I to read as follows:

I. The director is hereby authorized to issue special number plates to be used on motor vehicles owned by veterans of the United States armed services, in lieu of other number plates. The design of these special plates shall be determined by the commissioner, and shall be distinct from the design or designs of those plates issued under RSA 261:86. Such plates shall be issued only to veterans as defined in RSA 21:50, I(a) upon application, proof of veteran status in a form authorized by RSA 21:50, I(b), and payment of ~~[a one-time \$25 fee to recover production and administrative costs that shall be in addition to]~~ the regular motor vehicle registration fee and ~~[any other number]~~ **the \$4 per** plate fees ~~[otherwise required]~~ **under RSA 261:75**. The director shall also issue such plates to any person providing proof of honorable discharge from the armed services of any nation allied with the United States during World War II and proof of such person's service during World War II. Renewals of such special number plates shall be charged the fee assessed for standard motor vehicles as prescribed under RSA 261:141. The plates furnished pursuant to this section are non-transferable and shall expire upon the death of the veteran, except that the surviving spouse may use the plates for one year after the death of the veteran and shall be eligible to replace the plates during that year at no charge under RSA 261:75.

3 Registration Fees; Veteran Exemptions. Amend RSA 261:141, VIII to read as follows:

VIII. No fee shall be charged for registering a vehicle owned by any person who:

(a) Because of being an amputee, or paraplegic, has received said motor vehicle from the United States government or whose vehicle is to replace one so received, or who is evaluated by the United States Department of Veterans Affairs to be permanently and totally disabled from such service connected disability~~[-, a special number plate]~~.

(b) Has been determined by the Department of Veterans Affairs to be suffering from total blindness as a result of a service connected disability~~[-, a special number plate]~~.

(c) *Is a former prisoner of war and was captured and incarcerated while serving in a qualifying war or armed conflict as defined in RSA 72:28, V, and who was honorably discharged.*

4 Effective Date. This act shall take effect July 1, 2008.

2008-0137s

AMENDED ANALYSIS

This bill:

I. Eliminates the one time fee for special number plates for veterans.

II. Clarifies the disabled veteran exemption from state vehicle registration fees.

III. Exempts former prisoners of war from state vehicle registration fees.

SENATOR LETOURNEAU: Thank you, Madam President. Senate Bill 490-FN eliminates the one-time fee for special license fees for veterans, clarifies a disabled veteran exemption for state vehicle registration fees, and exempts former prisoners of wars from state vehicle registration fees. The Committee attempted to address several special number plate issues concerning veterans with an amendment to this bill, but what came out of Legislative Services clearly does not reflect what the Committee voted on. So while the Committee supports the amendment found

in your Calendar, which accomplishes the same goals of what is not what was passed out of Committee. Therefore, I would like to ask this body to vote "no" on the committee amendment so that the members of the Transportation and Interstate Cooperation Committee can offer a floor amendment, using the same text found in the committee amendment but with the names of the committee members. We ask you to do this in the interest of respecting the committee process. Thank you.

(The Chair recognized Sen. Burling to speak.)

SENATOR BURLING: Thank you again, Madam President. I want to reinforce what my chairman has just said. We did try very hard in committee to make some appropriate policy choices about the veteran's plate. I have promised myself, and I've said to several of you that I will never, ever, ever again, take up the issue of a veteran's plate. This particular section of our statutory scheme makes a labyrinth look like a Sunday picnic. In any case, the work that we did in committee, and we all did it together, when taking to drafting, clearly appeared to be deficient. I would ask that we vote down the committee amendment as printed in the Calendar so that the chairman can offer the text which is truly our intention. Thank you, Madam President.

**The question is on the adoption of Committee Amendment 0137s.
Committee Amendment 0137s failed.**

Sen. Letourneau offered a floor amendment.

Sen. Letourneau, Dist. 19

Sen. Burling, Dist. 5

Sen. Kelly, Dist. 10

Sen. DeVries, Dist. 18

Sen. Clegg, Dist. 14

January 22, 2008

2008-0174s

03/10

Floor Amendment to SB 490-FN

Amend the title of the bill by replacing it with the following:

AN ACT relative to fees for special number plates for veterans and relative to vehicle registration fees for disabled veterans and former prisoners of war.

Amend the bill by replacing all after the enacting clause with the following:

1 Special Number Plates for Certain Veterans; Fees. Amend RSA 261:86, II to read as follows:

II. Plates furnished pursuant to subparagraphs I(a)-(c) shall be issued without charge. Plates furnished pursuant to subparagraphs I(d) and (e) shall be issued upon payment of the regular registration **fee** and **[number] the \$4 per plate fees under RSA 261:75**. Notwithstanding RSA 265:73 or any other law, any person who is issued a plate pursuant to subparagraphs I(c)-(e) shall not be entitled to free parking privileges provided for disabled veterans, except that a person who qualifies for special plates pursuant to subparagraph I(d) may be issued an additional special plate for a motorcycle.

2 Special Number Plates for Veterans; Fee Eliminated. Amend RSA 261:87-b, I to read as follows:

I. The director is hereby authorized to issue special number plates to be used on motor vehicles owned by veterans of the United States

armed services, in lieu of other number plates. The design of these special plates shall be determined by the commissioner, and shall be distinct from the design or designs of those plates issued under RSA 261:86. Such plates shall be issued only to veterans as defined in RSA 21:50, I(a) upon application, proof of veteran status in a form authorized by RSA 21:50, I(b), and payment of ~~[a one time \$25 fee to recover production and administrative costs that shall be in addition to]~~ the regular motor vehicle registration fee and ~~[any other number]~~ **the \$4 per** plate fees ~~[otherwise required]~~ **under RSA 261:75**. The director shall also issue such plates to any person providing proof of honorable discharge from the armed services of any nation allied with the United States during World War II and proof of such person's service during World War II. Renewals of such special number plates shall be charged the fee assessed for standard motor vehicles as prescribed under RSA 261:141. The plates furnished pursuant to this section are non-transferable and shall expire upon the death of the veteran, except that the surviving spouse may use the plates for one year after the death of the veteran and shall be eligible to replace the plates during that year at no charge under RSA 261:75.

3 Registration Fees; Veteran Exemptions. Amend RSA 261:141, VIII to read as follows:

VIII. No fee shall be charged for registering a vehicle owned by any person who:

(a) Because of being an amputee, or paraplegic, has received said motor vehicle from the United States government or whose vehicle is to replace one so received, or who is evaluated by the United States Department of Veterans Affairs to be permanently and totally disabled from such service connected disability~~[- a special number plate]~~.

(b) Has been determined by the Department of Veterans Affairs to be suffering from total blindness as a result of a service connected disability~~[- a special number plate]~~.

(c) *Is a former prisoner of war and was captured and incarcerated while serving in a qualifying war or armed conflict as defined in RSA 72:28, V, and who was honorably discharged.*

4 Effective Date. This act shall take effect July 1, 2008.

2008-0174s

AMENDED ANALYSIS

This bill:

I. Eliminates the one time fee for special number plates for veterans.

II. Clarifies the disabled veteran exemption from state vehicle registration fees.

III. Exempts former prisoners of war from state vehicle registration fees.

SENATOR LETOURNEAU: Thank you, Madam President. I'd like to offer Committee Amendment 2008-0174s.

PRESIDENT LARSEN: Floor Amendment 0174 has been proposed. You may speak to the amendment.

SENATOR LETOURNEAU: Thank you, Madam President. This is the amendment that we have approved. You will find each member of the Senate Transportation Committee listed on this amendment, and this is what our intention is. Thank you very much.

The question is on the adoption of Floor Amendment 0174s.

Floor Amendment 0174s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 490-FN.

(The Chair recognized Sen. Barnes to speak.)

SENATOR BARNES: Thank you, Madam President. I'm assuming this bill is going to go to Finance?

PRESIDENT LARSEN: It is not so indicated. No.

SENATOR BARNES: It is not going to Finance.

PRESIDENT LARSEN: I would recognize Sen. D'Allesandro to speak.

SENATOR D'ALLESANDRO: Thank you, Madam President. I've decided to waive this from Finance because the revenue goes into the Plate Inventory Fund. The Plate Inventory Fund has a fairly significant balance at this point in time, so I don't think that – I don't think the fiscal note is exactly correct, because it would mean that everybody would apply and would reapply, and would reapply, and reapply, and at that rate, it would probably take a hundred years to deplete the fund. So I think we're safe for a hundred years.

(The Chair recognized Sen. Barnes to speak.)

SENATOR BARNES: Thank you, Sen. D'Allesandro. A great decision, another great decision by Sen. D'Allesandro. When this bill was coming about, the Governor had conversations with a few of us, and we brought up the fact that there was more than one plate. He started out with the veteran's plate, and he assured myself and probably some of the other folks that talked about it – the sponsor is sitting right here and I'm sure she was given the same story I was by the Governor – that he would find the money. So, you and the Governor are on the same track. He didn't figure that it would be a problem. Great minds think alike.

SENATOR D'ALLESANDRO: Thank you.

SENATOR BARNES: Thank you very much, Madam President.

The question is on the adoption of Ought to Pass as Amended on SB 490-FN.

A roll call was requested by Sen. Letourneau, seconded by Sen. Barnes.

The following Senators voted Yes: Gallus, Reynolds, Kenney, Sgambati, Burling, Cilley, Janeway, Odell, Roberge, Kelly, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, DeVries, Letourneau, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.

The following Senators voted No: None.

Yeas: 23 - Nays: 0

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 467, relative to taking lobsters and crabs. Wildlife, Fish and Game and Agriculture. Ought to Pass, Vote 5-0. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you, Madam President. I move Senate Bill 467 ought to pass. And I want you all to pay very strict attention to this, because this is a meaningful piece of legislation that has a dramatic effect on the environment. This bill allows lobster trawls used to take lobsters and crabs that are less than five traps per trawl to be tethered by only one buoy. Current New Hampshire law requires

any trawl with two or more traps to have one buoy at each end, which means you'd have to have them in this configuration: one here and one here. But as a result of this piece of legislation, we can dismiss one. And by doing that, remember, with this methodology that we have just done away with endangered whales who become entangled in the buoy lines causing them harm to their whale flippers. This bill would make New Hampshire law consistent with federal legislation. Please join the Wildlife, Fish and Game and Agriculture Committee – that is a corpus of a committee that really handles everything – in voting this bill ought to pass. Our magnificent chairman, Sen. John Gallus, led us down a path here and we followed without hesitation. Thank you, Madam President.

(The Chair recognized Sen. Gatsas for a question of Sen. D'Allesandro.)

SENATOR GATSAS: Sen. D'Allesandro, does this mean that the whales that come up this way are not as bright as the whales in other parts of this country so that we can take one of the buoys away so that they don't hit the second one?

SENATOR D'ALLESANDRO: Well, we know that New England whales have a very, very high intellectual capacity, and as a result of this bill, we will be challenging that capacity to differentiate between one and two buoys. It's an IQ test.

The question is on the adoption of committee recommendation of Ought to Pass on SB 467.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 469, allowing fish and game license agents to collect an additional convenience fee. Wildlife, Fish and Game and Agriculture. Ought to Pass with Amendment, Vote 4-1. Senator Janeway for the committee.

Wildlife, Fish and Game and Agriculture

January 17, 2008

2008-0134s

10/05

Amendment to SB 469

Amend RSA 214:15, I(b) as inserted by section 1 of the bill by replacing it with the following:

(b) Except for electronic issuance by an agent under RSA 214:7, VI, the agent may charge a convenience fee of up to \$2 for each license form used in a single transaction, which shall be retained by the license agent.

MOTION TO TABLE

Sen. Foster moved to have SB 469 laid on the table.

Motion adopted.

LAI D ON THE TABLE

SB 469, allowing fish and game license agents to collect an additional convenience fee.

SB 480, repealing a requirement that the fish and game department publish certain hunting season information in newspapers in each county. Wildlife, Fish and Game and Agriculture. Ought to Pass, Vote 4-0. Senator Gallus for the committee.

SENATOR GALLUS: Thank you, Madam President. I move SB 480 ought to pass. This bill will repeal RSA 210:24 which has been in place since 1977 but not used since 2001. It was originally intended to be a

method of notification whenever the director opened and closed any fur-bearing animal season. In 2001, the Legislature extended the executive director's authority through rules requiring extensive public notice and input. Currently, the Department circulates hunting season widely, and provides licensees with season and bag limits when they purchase their licenses. Please join the Wildlife, Fish and Game and Agriculture Committee in voting this bill ought to pass, and we thank you.

The question is on the adoption of committee recommendation of Ought to Pass on SB 480.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

RESOLUTION

Sen. Foster moved that the Senate adjourn from the Early Session, that the business of the Late Session be in order at the present time, that all bills and resolutions ordered to a Third Reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

Motion to adjourn adopted.

Adjournment from the Early Session.

LATE SESSION

Third Reading and Final Passage

SB 90-FN, relative to the penalty for impersonating a law enforcement officer.

SB 177, relative to orders of reparation by the public utilities commission and penalties against public utilities.

SB 259, establishing state appliance and equipment energy efficiency standards.

SB 315, preventing the fraudulent use of the names of financial institutions.

SB 336-FN, relative to special number plates for veterans who are former prisoners of war.

SB 350-FN, extending the surcharge on probate court entry fees to judicial branch family division cases which would previously have been brought in probate court.

SB 369, relative to the towing and storage of motor vehicles.

SB 370, relative to emergency powers of the supreme court.

SB 377, relative to the application of the prudent investor rule to town trust funds.

SB 408, establishing a committee to study reverse mortgages.

SB 431, naming a small impoundment in Goffstown as Namaske Lake.

SB 447, eliminating obsolete provisions regarding pleas by mail and non-computerized courts.

SB 461, relative to accessibility of genealogical records to the public.

SB 467, relative to taking lobsters and crabs.

SB 480, repealing a requirement that the fish and game department publish certain hunting season information in newspapers in each county.

SB 488, relative to jurisdiction of the probate courts and superior courts.

SB 490-FN, relative to fees for special number plates for veterans and relative to vehicle registration fees for disabled veterans and former prisoners of war.

SB 521-FN, increasing the maximum scholarship amount available from the national guard scholarship fund.

SCR 7, urging the United States Department of Defense and Congress to restore full services to the Manchester Veterans Administration Hospital.

SCR 8, urging the United States Department of Defense to restore the designations of Prisoner of War and Missing in Action to those servicemen and servicewomen who are missing in operations in Afghanistan and Iraq.

ANNOUNCEMENTS

RESOLUTION

Sen. Foster moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, referring bills to committees, scheduling hearings, sending and receiving messages, and processing enrolled bill reports and amendments.

Motion to recess adopted.

The Senate is in recess to the Call of the Chair.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in its amendments to the following entitled House Bills sent down from the Senate:

HB 351, clarifying that the definition of "overseas business organization" includes all foreign incorporated business organizations and all 80/20 business organizations.

HB 754-FN, repealing the law relative to the Maine-New Hampshire Interstate Bridge Authority.

INTRODUCTION OF SENATE BILL(S)

Sen. Foster offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Senate Clerk, Senate legislation numbered **SB 528**, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

Resolution adopted.

First and Second Reading and Referral

08-2887

SB 528-FN, relative to a mercury-added thermostat collection program. (Fuller Clark, Dist 24; Odell, Dist 8; Hassan, Dist 23; Owen, Merr 4; Kaelin, Hills 4; Wells, Rock 8: Energy, Environment and Economic Development)

Out of Recess.

LATE SESSION

Sen. Foster moved that the Senate adjourn from the Late Session.

Motion to adjourn adopted.

Adjournment from the Late Session.

January 31, 2008

The Senate reconvened at 10:00 a.m., a quorum being present.

The Rabbi Richard L. Klein, from the Temple Beth Jacob in Concord, guest rabbi to the Senate, offered the following remarks and prayer:

This will be a perhaps bigger weekend than normal for prayers. On Saturday, there will be the skiers and non-skiers praying for the shadow or non-shadow of the groundhog. But, of course, the "biggie" is Sunday, and well, "Go Pats." In our synagogue we will be reading from the Book of Exodus, a section called "Mishpatim," which translates pretty much as "statutes." This section follows the Ten Commandments, which was part of our weekly reading last Sabbath. It contains multiple laws, rules, practices, ranging the gamut from criminal law to civil law, to family law, amongst which the Torah, the Hebrew Bible, makes no distinction. They are all considered part of a sacred covenant, and much of what we will read on this Sabbath forms the basis for our current justice system. Changing circumstances, of course, mean changing laws. But one thing that has not changed is that making law is a sacred task. May you and your work be blessed so that you may bring blessing to the people of New Hampshire.
Amen

Sen. Sgambati led the Pledge of Allegiance.

INTRODUCTION OF GUESTS AND PRESENTATIONS

Anna Grant, Stratham athlete, national NFL Pepsi "Punt, Pass & Kick" winner.

Holly and Norman Tetreault, constituents of District 2; Holly, a proponent of SB 473.

Raymond High School 2007 Class M Girls' Championship Soccer Team
Raymond High School Coach Tim Brazeau, 2007 Girls' Soccer Coach of the Year.

Senate Page: Matt Levene, ConVal High School, Peterborough.

John Dyer, Director of Work Force Development and Community Education, White Mountain Community College, Berlin.

INTRODUCTION OF SENATE INTERNS

Emmanuel Janos, UNH - Senator Maggie Hassan.

Craig Gallot, UNH - Senator Iris Estabrook.

Shana Friedman, UNH - Senator Harold Janeway/Senator Kathleen Sgambati.

Frans Andersson, UNH - Senator Peter Hoe Burling.

Danielle Minutelli, UNH - Senator Martha Fuller Clark.

Charlie Alford, UNH - Senator Deborah Reynolds.

Chris McClurg, UNH - Senator Bob Letourneau.

COMMITTEE REPORTS

SPECIAL ORDER

President Larsen moved, without objection, that SB 463 would be Special-Ordered from Addendum Calendar 4A to the front of the Calendar.

SB 463, establishing an investment committee in the New Hampshire retirement system. Executive Departments and Administration Committee. Ought to Pass with Amendment, Vote 6-0. Senator Downing for the committee.

Senate Executive Departments and Administration
January 28, 2008
2008-0259s
10/09

Amendment to SB 463

Amend the title of the bill by replacing it with the following:

AN ACT establishing an investment committee and an audit committee in the New Hampshire retirement system.

Amend the bill by replacing all after the enacting clause with the following:

1 Retirement System; Management of Funds; Investment Committee; Audit Committee. Amend RSA 100-A:15 to read as follows:

100-A:15 Management of Funds.

I. The members of the board of trustees shall be the trustees of the several funds created hereby and ***shall set all policies relative to investment of those funds. The trustees shall appoint and oversee an investment committee that shall*** have full power to invest and reinvest such funds ~~[-and]~~ ***in accordance with the policies set by the board. The members of the investment committee shall serve at the pleasure of the board of trustees.*** The board of trustees shall have the powers, privileges, and immunities of a corporation. The members of the board of trustees shall ~~[also have the power]~~ ***authorize the investment committee*** to invest and reinvest such funds in participation units in the public deposit investment pool established pursuant to RSA 383:22. Said ~~[trustees]~~ ***investment committee*** shall have full power to hold, purchase, sell, assign, transfer, and dispose of any of the securities and investments in which any of the funds created hereby have been invested, as well as the proceeds of such investments. All of the assets and proceeds, and income there from, of the New Hampshire retirement system, and all contributions and payments made thereto, shall be held, invested or disbursed in trust solely in the interest of the members and beneficiaries of the system for the exclusive purpose of providing those benefits and defraying those reasonable administrative expenses provided for under this chapter. In the management, investment, and reinvestment of system assets so held in trust hereunder, the system's board of trustees ***and investment committee*** shall exercise the judgment and care under the circumstances then prevailing, which persons of prudence, discretion, and intelligence, acting in a like capacity and familiar with such matters, would use in the conduct of a pension plan of like character and with like aims as the system, and by diversifying investments of the system so as to minimize the risk of large losses to the trust fund.

II. The board of trustees shall:

~~(a) Have the authority to empower an investment committee of its members to make investments and deposits between meetings of the board.]~~ ***appoint an investment committee to make investments and deposits on behalf of the board. The investment committee shall consist of 5 members, 3 of whom shall be experienced in the field of institutional investment, and 2 of whom shall be members of the board. The investment committee shall:***

~~[(b)]~~ ***(a)*** Have the ~~[further]~~ authority to hire investment counsel. The compensation for investment counsel services and the compensation for actuarial services required by the board of trustees in performing the duties required by RSA 100-A:14 shall be a charge upon the funds of the New Hampshire retirement system.

(~~(e)~~) **(b)** Appoint and employ a custodian of the several funds of the retirement system, and such custodian, as an agent of the board **and the investment committee**, shall be compensated and such compensation shall be a charge upon the funds of the retirement system.

(~~(d)~~) **(c)** Have the full power and authority to delegate to any agent, within or without the state, who may or may not be the custodian of stocks and securities, the power and discretion to make decisions with regard to the purchase or sale of any legal object of investment and to take any action necessary to effect decisions by or on behalf of the New Hampshire retirement system with the same legal effect as if performed by the **investment committee or the** board of trustees of the New Hampshire retirement system. The ~~[board of trustees]~~ **investment committee** shall have the power to authorize the payment of compensation to an agent or agents for management services.

(d) Report to the board of trustees at least quarterly on the management, investment, and reinvestment activities of the investment committee.

II-a. The board of trustees shall appoint and oversee an audit committee to undertake audit and reporting requirements under paragraph VI of this section. The audit committee shall consist of 5 members, 3 of whom shall be experienced in the field, and 2 of whom shall be members of the board. The members of the audit committee shall serve at the pleasure of the board of trustees.

III. Except as otherwise provided in this section, no trustee, **no investment committee member, audit committee member**, and no employee of the board of trustees shall have any personal interest in the gains or profits of any investment made by the board; nor shall any trustee, **investment committee member, audit committee member**, or employee of the board, directly or indirectly, for himself **or herself** or as an agent, in any manner use the same except to make such current and necessary payments as are authorized by the board; nor shall any trustee, **investment committee member, audit committee member**, or employee of the board become an endorser or surety, or in any manner an obligor, for money loaned to or borrowed from the board.

IV. The board of trustees is authorized to engage the services of legal counsel for ~~[special investment,] federal[;]~~ and tax matters, and to engage outside counsel for other matters. The payment for services provided in this paragraph shall be a charge upon the funds of the New Hampshire retirement system.

V. The board of trustees shall adopt rules pursuant to RSA 541-A relative to procedures to be followed in establishing and modifying investment objectives and guidelines~~[-, and in selecting investment managers, investment products and investment participations]~~. **The investment policies shall not be subject to rulemaking under RSA 541-A.**

VI.**(a)** The funds of the New Hampshire retirement system shall be audited annually. **The audit committee shall hire a qualified auditor who shall conduct the annual audit and report its findings to the board for approval and acceptance. In addition,** the ~~[board of trustees]~~ **audit committee** shall complete, not later than 120 days after the close of the fiscal year~~[-, unless the fiscal committee and the governor and council for good cause shall extend such period]~~, a comprehensive annual financial report concerning the preceding fiscal year that details the financial condition and operation of the system during that period in a manner consistent with generally accepted accounting principles. **The fiscal committee and the governor and council for good cause may extend such period.** Said report subsequently shall

be audited by the legislative budget assistant who may designate a certified public accountant not employed in the state service to conduct the annual audit and may accept the findings and report of the certified public accountant as fulfilling the provisions of this paragraph, provided that in either case said audit shall be conducted in accordance with prevailing standards and practices of governmental auditing specified by authoritative national standard setting bodies.

(b) The audit committee shall cause a performance audit not less frequently than every 3 years.

(c) Copies of all audits and reports shall be forwarded to the governor, the senate president, and the speaker of the house of representatives. The cost of ~~[such audit]~~ ***all audits and reports*** shall be a charge upon the funds of the New Hampshire retirement system.

VII. The board of trustees shall complete a comprehensive annual investment report at the same time that the annual financial report under paragraph VI is completed. The investment report shall be submitted to the president of the senate, the speaker of the house, and the governor. The report shall include, but shall not be limited to:

(a) A description of the board's philosophy for investing the assets of the system, including an analysis of any significant changes in philosophy which have occurred from the prior annual report.

(b) An analysis of the return on investment, by investment category.

~~(c) [Anticipated future uses of and approaches to the management, investment, and reinvestment of system assets under the principles of paragraph I.]~~ ***An annual investment policy statement which shall incorporate the following:***

(1) A clear statement of investment objectives including the adoption of a reasonable and sound average annual rate of return the retirement system is attempting to earn. The rate of return utilized for the statement of investment objectives shall be same as the assumed rate of return set by the trustees for the biennial actuarial calculation.

(2) A detailed breakdown of the asset structure most likely to enable the fund to reach its long range objective within appropriate risk parameters. The details should include all relevant subcategories among equities, debt, and alternative investments and identify the appropriate benchmarks for each performance analysis. The policy should establish an acceptable range for each allocation as well as a specific target allocation.

(3) Identification of how outcomes are measured and benchmarks are developed and who is responsible for the various decision levels in the investment process between the board of trustees, the investment committee, the retirement system's staff, investment consultants, and portfolio managers. The policy statement should specify the minimum frequency to review outcomes and responsibilities, in order to determine whether decisions as to asset mix and manager selection added value to the fund. Investment managers should be under constant review by the retirement system.

(d) Any suggested changes in legislation which the board may seek in order to better serve the members of the system. This is not intended to preclude the board of trustees from seeking additional legislation as needs arise between annual reports.

VIII. The management, investment, and reinvestment practices for the assets held in trust by the board pursuant to this section shall be subject to review by the legislature.

IX. All non-trustee members of the audit and investment committees shall be afforded the same liability insurance and indemnification as board members.

X. Not later than January 1, 2010, the board of trustees shall report to the governor, the senate president, and the speaker of the house of representatives on the operation of the audit and investment committees.

2 Effective Date. This act shall take effect 60 days after its passage.

2008-0259s

AMENDED ANALYSIS

This bill requires the appointment of an investment committee and an audit committee in the New Hampshire retirement system.

SENATOR DOWNING: Thank you, Madam President. I move Senate Bill 463 ought to pass as amended. This bill requires the appointment of an investment committee in the New Hampshire Retirement System. Creating this committee represents a moderate approach and enhances the governance section, giving us a place to start to analyze the issues that are coming our way. The Board of Trustees will choose the investment committee which will have the proper experience and professionalism to provide the expertise in dealing with over \$6 billion of investments for our New Hampshire retirees. This legislation will allow for more sunlight in the process. Further, Senate Bill 463 will create an audit committee that will ensure annual audits as well as performance audits are performed. This bill does not solve all the problems within the system, but it's a start, regaining the structure that has been lost. Please join the ED&A Committee in ought to pass as amended. Thank you.

(The Chair recognized Sen. Janeway to speak.)

SENATOR JANEWAY: Thank you, Madam President. Since the committee amendment is the meat of this, may I address it now? Thank you. And thanks to Sen. Downing for reporting this ably. I rise in support of this bill. Since my appointment to the Retirement System Board as your Senate designee a year ago, I've had a good opportunity to study the history, the governance and the way things work. The commission to study the system which we established last spring, and which I served on, furthered that process for four what I would call arduous months ending just at the end of December, and that commission recommended a number of steps to address shortcomings, and I hope by now everybody has at least read some, if not all, of this report. There's a great deal of good work that went into this by a number of people, and I think it was a singular accomplishment, both in terms of bringing people together and focusing on what needed to be done. It's interesting that the State's latest bond-issue-offering circular has several pages, more than several pages, on the Retirement System, but it also has a section discussing the commission and the recommendations, so that the bond buyers are both watching and are interested in what we do here. So, and I also recommend this to all of you, not to read it all, but there's an extraordinary wealth of information in one place in this circular, whether you want to buy the bonds or not.

Let me be clear, the trustees of the system are a fine group of individuals. They're engaged, they're diligent, and they're conscientious; however, their responsibility is truly daunting. As Sen. Downing mentioned, this is a \$6 billion pool of assets. It provides benefits to more than 21,000

retired members, and you can multiply that by some factor for families, and another 55,000 active members. So probably close to a quarter of the population of this state, in one way or another, has more than a passing interest in this whole system. And I probably needn't remind you of the budget impact of this system, both on the State, and on counties, and the towns and the school districts. For the State alone, the amount in fiscal '07 in the budget was \$78 million. This year it's a hundred – this fiscal year, \$107 million; next year it's \$112 million. And there's the potential, as is actually spelled out in this offering circular, that if things aren't addressed, that the increase in the subsequent biennium would be, could be substantial, to put it mildly. So, the problem is that this system, it has been permitted, by all sorts of things, to get itself into a hole and that hole in dollar terms is \$2.6 billion. Over the last ten years the liabilities of the system, as calculated by the actuaries, increased by \$4.6 billion. The assets increased by only 2 billion. So in other words, ten years ago, it was roughly in balance; now it's out of balance by that amount. And that's before taking into effect whatever the medical cost may be going forward.

So, what to do about this. We obviously can't legislate better investment performance, but poor investment performance was one of the factors that contributed to the problem that we're in now. This fund, over the past ten years, relative to its peers, was in the 69th decile, in other words, close to the bottom quarter of the class. This fund over the past ten years fell short of its target return, which was 9 percent, now reduced to 8.5, because – by almost two full percentage points, the return was only 7.1 percent. So, putting it in very simple terms, think of 1 percent on this \$6 billion pot, is \$60 million. And if you could just up your – if we had just earned in the sort of middle of the class, this fund would now be hundreds of millions of dollars higher than it is. So that's why we think that it is important that some investment experience and competence be introduced into the board, and that's what this bill does. The board, obviously, isn't making the individual investment decisions and moves itself, but it does still have huge responsibilities, first to set an asset mix, which is how much you have in various asset classes – bonds, stocks, private investments, real estate, timber, you name it – and then picking the managers to implement that. So those are big responsibilities.

True, we have an investment consultant, Ennis Knupp, still relatively new, who works with the board and with the system on all of this. However, if there isn't enough experience and competence on the board to work with the consultant, it's kind of a lopsided arrangement. And if any of you work with consultants, you tend to do better if you compress, and if there's more of an even match, in terms of that relationship. So it is important to us. So, there really is no substitute for experience. It is also clear, and some of this is in the appendix to the report, that smaller investment committees work better than large investment committees. At this point, the whole system, the full board acts as a "committee of the whole." And the more, the more "cooks in the soup," the less satisfactory the results and the decisions tend to be. So that's an important element here. Does this assure improved investment performance? Obviously not. But it certainly sets us up to attain better performance. Is the board being asked to abrogate its responsibility? Not at all. It retains that responsibility, and this is in fact what we're proposing, a rather standard model for endowments and funds such as this. So, in closing, just ask yourself, if you had some money and you were looking for someone to invest it, wouldn't you turn to an expert, and that's what we're doing. Thank you very much.

The question is on the adoption of Committee Amendment 0259s. A roll call was requested by Sen. Foster, seconded by Sen. Barnes.

The following Senators voted Yes: Gallus, Reynolds, Kenney, Sgambati, Burling, Cilley, Janeway, Odell, Roberge, Kelly, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, DeVries, Letourneau, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.

The following Senators voted No: None.

Yeas: 24 - Nays: 0

Committee Amendment 0259s adopted.

(The Chair recognized Sen. Burling to speak.)

SENATOR BURLING: Thank you, Madam President. I rise just to say, on behalf of the Committee, to all those who are stakeholders in this process who had the courage to look at tough decisions and accept responsibility and urge us on to do the right thing, I just want to say "thank you" from the membership of the Committee.

The question is on the adoption of Ought to Pass as Amended on SB 463.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 426, establishing a committee to study the current definition of the term "community benefit" applicable to nonprofit health care providers. Commerce, Labor and Consumer Protection Committee. Ought to Pass with Amendment, Vote 6-0. Senator Barnes for the committee.

Commerce, Labor and Consumer Protection

January 23, 2008

2008-0204s

09/01

Amendment to SB 426

Amend paragraph I of section 2 of the bill by replacing it with the following:

I. The members of the committee shall be as follows:

(a) Two members of the senate, appointed by the president of the senate.

(b) Three members of the house of representatives, appointed by the speaker of the house of representatives.

Amend the bill by replacing sections 4 and 5 of the bill by replacing them with the following:

4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named senate member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Two members of the committee shall constitute a quorum.

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2008.

SENATOR BARNES: Thank you, Madam President. I move Senate Bill 426 ought to pass with amendment. This bill establishes a com-

mittee to study the current definition of the term "community benefit" applicable to nonprofit healthcare providers. This legislation evolved from a study committee this summer charged with looking at ways to reduce healthcare costs for small businesses. In New Hampshire and elsewhere, nonprofit hospitals are permitted to establish such funds which are dedicated to community betterment projects. The study committee heard testimony that perhaps these community betterment funds could be distributed creatively to help reduce healthcare costs for small businesses. The bill was amended to reduce from three to two, the quorum, and to ensure that the first meeting of the commission is called by the first-named Senator. Please join the members of the Commerce, Labor and Consumer Protection Committee in voting yes on this important piece of legislation.

The question is on the adoption of Committee Amendment 0204s. Committee Amendment 0204s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 426.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 470, allowing lobbyists and those connected with lobbyists to sit on committees established by the judicial branch. Election Law and Internal Affairs Committee. Ought to Pass, Vote 4-0. Senator Burling for the committee.

SENATOR BURLING: Thank you, Madam President. Madam President, I move Senate Bill 470 ought to pass. This bill would allow lobbyists and those connected with lobbyists to sit on committees established by the Judicial Branch. It was requested by the Supreme Court. More correctly, what this bill does is allow citizens who are also advocates to serve on the various committees of the judicial system, and those are a great many. The problem we confront is the problem that law firms, the kinds of firms that really represent the core of the judicial – the legal profession these days, have dozens of lawyers, some of whom may wear an orange badge or advocate before governmental entities. If any one member of a law firm is also serving as a lobbyist, wearing the orange badge, then in many firms the rest of the lawyers say: I can't participate in any of the Judiciary's various committees. Passage of this bill will make it clear that because one's legal practice from time to time includes the wearing of the "orange badge," all the lawyers in that firm are not disqualified, and the wearer of the orange badge is not disqualified from serving on a judicial committee. It was the sense of the Committee that we needed to pass this to ensure the continued participation of all lawyers in the various governance structures of the New Hampshire Judiciary, and the Election Law and Internal Affairs Committee asks for your vote in support of Senate Bill 470. Thank you, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on SB 470.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

Sen. Foster asserted Rule 42 on SB 470.

PRESIDENT LARSEN: In the interest of time for our guests, without objection, I would like to move to Senate Bill 473, take it out of order. It is in the Municipal – Public and Municipal Affairs Committee, Senate Bill 473, without objection.

SPECIAL ORDER

President Larsen moved, without objection, that SB 473 be Special-Ordered and heard at the present time.

SB 473, naming the Prisoners of War/Missing in Action Memorial in Hesky Park in the town of Meredith. Public and Municipal Affairs Committee. Ought to Pass with Amendment, Vote 4-0. Senator Sgambati for the committee.

Public and Municipal Affairs

January 22, 2008

2008-0184s

04/05

Amendment to SB 473

Amend the bill by replacing section 2 with the following:

2 Signage. The cost of design, construction, maintenance, and installation of any signage, replacement signage, or other markers authorized under section 1 of this act shall not be a charge to the state. However, the design, construction, and installation of any signage or other markers at Hesky Park authorized under this act shall be approved by the town of Meredith and any signage or other markers in the state right of way authorized under this act shall be approved by the department of transportation.

SENATOR SGAMBATI: Thank you, Madam President. I move that Senate Bill 473 be ought to pass with amendment. This bill establishes the Prisoner of War/Missing in Action Memorial in the Hesky Park in the Town of Milford – in the Town of Meredith. The amendment gives the town the right to approve signage regarding the memorial. This monument is the site of the oldest POW/MIA vigil, and the vigil has been kept every week by community members and family members since its inception. The Town of Meredith is a “POW Awareness” site for New Hampshire and an example to other states. The Committee strongly supports the efforts to bring this bill forward and to honor the brave men and women. The Public and Municipal Affairs Committee requests your support for this amended legislation. Thank you, Madam President.

(The Chair recognized Sen. Reynolds to speak.)

SENATOR REYNOLDS: Thank you, Madam President. Madam President, I rise in support of the committee amendment as well as the bill as a whole, if I may. This bill, as you know, would establish a statewide memorial for MIA's and POW's in Hesky Park in Meredith. And I want to show my colleagues a copy of a very beautiful photograph that shows this very important memorial in the Town of Meredith. I can tell you from firsthand knowledge that this memorial is religiously monitored and supervised by people in the town. Many of us have gone there on Thursday night to say some prayers and to think about those who are Missing in Action and POW's. During our Annual Bike Week every year, thousands of bikers throughout the United States – and I also believe our colleague, Sen. Letourneau– on many occasions have gone there to reflect and to give thanks for, and mourn for, those who are Missing in Action. This bill was brought forward at the request of one of my great constituents, Holly Tetreault, who is here today. Holly has been, and her entire family, quite frankly, have been very, very involved in the whole POW/MIA movement. Holly has also brought for me today a photograph of Sergeant Matt Maupin who was captured on 4/9/04. And it

says, "Love never loses its way home." And we in the state Senate think of our Missing In Action and our POW's as our children, our friends, our brothers and sisters. We don't think about whether they are Democratic or Independent or Republican; they're our boys. So this bill will help us never forget those who are Missing in Action or Prisoners of War. We must continue to fight for their safe return and for all of those who are Missing in Action or POW's, wherever they may be, including our most recent conflicts in Iraq and Afghanistan. This bill is a way to honor their memory. Thank you, Madam President.

(The Chair recognized Sen. D'Allesandro to speak.)

SENATOR D'ALLESANDRO: Thank you. Thank you, Madam President. "MIA" is a term that we pass around and we think about a lot. I had a classmate at the University of New Hampshire, Major Alan Page. Major Page was from Derry. Major Page is an MIA from the Vietnam Conflict. When he was reported as an MIA, he was married, had some children, actually. His wife was from Keene. And there was an effort on the part of Mrs. Page and the father before they passed away to really look into, vigorously, ways to find out about the missing in war, the Missing in Action, the prisoners. There's a monument in the park in Derry in tribute to Al Page. Al Page was a really, really terrific guy. He played football with me at the University of New Hampshire, was an Air National Guard guy and in those days was stationed at Pease and would do his flying, and on a couple of occasions, "buzz" the football field as we were practicing. We can't ever forget the "Al Pages" of the world. I go to the Vietnam Memorial and find Al's name and run my hand across it because life's all about relationships, and all of us have a relationship with someone who's gone before us, and remembering them I think, is fundamental. I know Sen. Barnes is really into this issue, very, very much, and I support that wholeheartedly. But it's the "Al Pages" of the world who make our world a better place, and we can never, never forget what they did for us. Thank you, Madam President.

(The Chair recognized Sen. Letourneau to speak.)

SENATOR LETOURNEAU: Thank you, Madam President. I, too, rise in support of this bill. And I want to let my colleagues know that while this seems like just a small naming of something, this is very, very important to a lot of people. Every single Thursday night there's a group that meets and they do a memorial, a vigil, for the Missing in Action and POW's that we have here. But once a year during Motorcycle Week there's a Freedom Ride, they call it the "Freedom Run," where thousands show up and they do a vigil. So it's not just the State of New Hampshire that's recognizing this; it's the people who come here from out of state, they come and they recognize it every year. It's just a very strong tribute to a man named Bob Jones up there in the Meredith area that goes there every single Thursday night, and the Northeast Chapter of the POW/MIA folks, and they are a very, very dedicated group, and this is – this is for them and their memorial. Thank you.

(The Chair recognized Sen. Barnes to speak.)

SENATOR BARNES: Thank you, Madam President. I just wanted to thank Sen. D'Allesandro for his comments on Mr. Page. One of the reasons, Senator, and I don't know whether you realize it or not, but that flag that's flying over the State House since 1987, just because of the gentleman you have just mentioned. I had an opportunity to meet his

mother. And sometimes I think we all forget something very important. We think of our MIA's, which is very important, but the folks that are left behind, the parents and the families, they're the ones that suffer and appreciate this. Mrs. Page, I sat with her on a platform over in Manchester in Veterans' Park, I believe it was, for a big ceremony a number of years ago, and that poor woman kept telling me how her boy was coming home.

The question is on the adoption of Committee Amendment 0184s.

A roll call was requested by Sen. Foster, seconded by Sen. Barnes.

The following Senators voted Yes: Gallus, Reynolds, Kenney, Sgambati, Burling, Cilley, Janeway, Odell, Roberge, Kelly, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, DeVries, Letourneau, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.

The following Senators voted No: None.

Yeas: 24 - Nays: 0

Committee Amendment 0184s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 473.

A roll call was requested by Sen. Reynolds, seconded by Sen. Gottesman.

The following Senators voted Yes: Gallus, Reynolds, Kenney, Sgambati, Burling, Cilley, Janeway, Odell, Roberge, Kelly, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, DeVries, Letourneau, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.

The following Senators voted No: None.

Yeas: 24 - Nays: 0

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 499-FN, relative to penalties for unauthorized disclosure of confidential matters in legislative ethics proceedings. Election Law and Internal Affairs Committee. Ought to Pass, Vote 4-0. Senator Burling for the committee.

SENATOR BURLING: Thank you, Madam President. Madam President, I move Senate Bill 499-FN ought to pass. This bill provides that unauthorized disclosure of confidential matters in legislative ethics proceedings shall be a misdemeanor. This legislation was a request of the Legislative Ethics Committee, and my colleague from Senate District 9 and I represent the Senate on that committee. It is brought in order to ensure a fair and calm deliberative process. The confidentiality of that process being critical to our fair deliberations and the importance of protecting that process for the sake of the accused and those bringing charges forward is the reason for this bill. The Election Law and Internal Affairs Committee requests your support for our motion of ought to pass. Thank you, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on SB 499-FN.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 406, relative to exempting the town of Wakefield from the setback requirements of the shoreland protection act. Energy, Environment and Economic Development Committee. Inexpedient to Legislate, Vote 5-0. Senator Odell for the committee.

SENATOR ODELL: Thank you, Madam President. I move Senate Bill 406 inexpedient to legislate. This bill would exempt the Town of Wakefield from the setback requirements of the Shoreline [sic] Protection Act. Currently, the Department of Environmental Services has an appeals process in which homeowners can receive a waiver if they are able to present a case that the setback requirement presents a hardship. The Committee believes that exempting any one town would set a bad precedent and therefore asks for your support of the motion to vote Senate Bill 406 inexpedient to legislate. Thank you, Madam President.

(The Chair recognized Sen. Kenney to speak.)

SENATOR KENNEY: Thank you, Madam President. I am the sponsor of this bill, Senate Bill 406. And I must explain some basic ... basic thought behind this piece of legislation. Last fall the Town of Wakefield, and its lakes community, had a large meeting, close to 300 people, in which the town leaders had put together. And from that meeting they asked me to come before the Legislature to offer some legislation with the setback requirements. And at that time I learned that – and I've known for some time – that Wakefield, 98 percent of its shoreline is built up and there's a small stretch of water on Great East Lake that has been undeveloped. And in 2002, towns were allowed to set their own setback rules. And when we passed House Bill 383, we eliminated that and it's now a 50 foot – 50-foot setback rule. So in essence, Wakefield's lots became nonconforming. And Wakefield has had a long tradition of protecting its water, and we have a lot of lake associations, and they take pride in what they do in protecting the environment, and have been very involved in legislation here before the Legislature in the past.

House Bill 663 creates six positions in DES from the Wetlands and Shorelines Review Fund. I am hopeful it's these positions that will be funded and that people will be hired to allow for the DES hardship waiver. There's one thing through this whole process that I learned, was that in the case of Wakefield and other lakes communities, is that you can build up, but you can't necessarily build across with the 50-foot setback. And so most of our people along the lakes tend to be older, so they're not going to build "up" with their houses on the lakes; they're probably going to want to put on an addition, because they might have a relative who's an older relative that they want to put on a companion room of some kind. So this was the biggest – one of the biggest arguments throughout this whole process that Wakefield was concerned about. So I just – I mention it. I understand that there's not support for the passage of this bill, but I hope that DES does create a good hardship waiver process so that people along the lakes have the ability to add onto their homes in a reasonable way. Thank you, Madam President.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on SB 406.

Motion of Inexpedient to Legislate adopted.

Sen. Kenney is in opposition to the motion of Inexpedient to Legislate on SB 406.

SB 455, relative to the removal of designations from certain real property by the department of environmental services. Energy, Environment and Economic Development Committee. Inexpedient to Legislate, Vote 5-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Madam President. I move Senate Bill 455 inexpedient to legislate. This bill would allow the Department of Environmental Services to remove designations of certain real property in the records of the Department. The prime sponsor testified that this bill was introduced to address an issue in Moultonborough, and guess what, the town took care of it themselves, they didn't need us doing it for them. Therefore, this bill is no longer needed, and please join the Committee and going along with our report of inexpedient to legislate.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on SB 455.

Motion of Inexpedient to Legislate adopted.

SCR 5, urging that federal, state, and local governments work with broadcasters and consumer groups to inform New Hampshire residents of the 2009 digital broadcast conversion. Energy, Environment and Economic Development Committee. Ought to Pass, Vote 5-0. Senator Fuller Clark for the committee.

SENATOR FULLER CLARK: Thank you very much, Madam President. I move Senate Concurrent Resolution 5 ought to pass. The request for this resolution came from the New Hampshire Association of Broadcasters. It urges the federal, state and local governments and consumer groups to inform New Hampshire residents of the 2009 digital broadcast conversion. On February 17, 2009, broadcasters licensed by the Federal Communications Commission are required to turn off their analog systems, impacting potentially up to 50,000 New Hampshire households that currently receive free over-the-air television. New Hampshire consumers will have three options that will allow an analog television to receive digital programming. The first two options are either to subscribe to a cable or to a satellite service. The third option is to purchase a digital-to-analog converter to connect between your antenna and your television. The National Telecommunications and Information Administration is distributing up to two \$40 coupons per household to offset the purchase of no-frills converter boxes expected to cost about \$60. Coupon applications have been available since January 1, 2008. The Committee believes that it is important to help inform New Hampshire consumers of this change and to let people know that if they are interested in the converter coupon program, they can go to www.dtv.gov or call 1-888-DTV-2009. Early purchase will ensure New Hampshire residents of the availability of these coupons. Copies of this resolution will be sent to the New Hampshire Congressional delegation, the legislative body of each municipality in the state, the New Hampshire Municipal Association, the Commissioner of Resources, Recreation and Development, the Executive Council, and the New Hampshire Telecommunications Advisory Committee. Please join the Energy, Environment and Economic Development Committee and vote ought to pass. Thank you.

(The Chair recognized Sen. Burling to speak.)

SENATOR BURLING: Thank you, Madam President. Madam President. I guess for those of us who are old enough to remember staring at a two-and-a-half-inch black and white TV in the early '50s, my first experience

was to watch my dad who was the lead counsel for the Kefauver Committee. This is an historic moment in technology. It's kind of like when the Coastguard gave up using Morse Code. We're going from analog to digital. That will impact some of our constituents. This was brought to me and I brought it in before the Senate in order to encourage federal, state and local participation. And it's amazing, when you do that, people pop up and say: You know, we're already trying to work on that. My old friend, John Thomas, the Representative from Belknap, District 5, popped up and said, "It's amazing, Sen. Burling, I'm actually on the federal task force that is working on this very issue." So if I may, I just report and read two brief paragraphs from his letter that he handed me this morning: "Sen. Burling, I sit on the Intergovernmental Advisory Committee to the Federal Communications Commission. It's made up of 15 members from across the country of various levels of government and regulatory agencies. We meet in Washington, D.C. four times a year. The first issue we have addressed is the conversion to digital broadcasting. Because of the concerns of all citizens, we all agree that the best way to address those concerns is by education and outreach." I'll skip down. "Although the federal government involvement is well on its way, I think passage of this resolution is timely in that it will help New Hampshire state and local governments to move forward in a cooperative way. Thank you for consideration of this communication." I just wanted to get that into the record. And thank you, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on SCR 5.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 326-FN, relative to salaries for certain unclassified positions. Executive Departments and Administration Committee. Ought to Pass, Vote 5-0. Senator Burling for the committee.

SENATOR BURLING: Thank you, Madam President. Madam President, I move Senate Bill 326-FN ought to pass. This bill establishes the salary ranges for the Chief of Policy and Planning of the Department of Safety, the Deputy Commissioner of the Department of Transportation, and the Director of Finance of the Department of Transportation. This is an internal change for the unclassified positions within those departments. These position grades help recognize the structure at hand for the DOT and the DOS. Please join the ED&A Committee in support of ought to pass. If I may, I'll add one further thought by way of clarification. For those of you who aren't on the various committees, this is the final step in a process of classification that takes place through the committee on classification, with reference to the "Hay Group," to get classification analysis and confirmation, and then finally it comes back to ED&A, and now the Senate floor. My understanding is the budget contains the funds to fund these positions. What we will have done at the end of all this is simply make the change according to the process that we put in place, and confirm a decision we made last year when we created these change positions. Thank you, Madam President.

(The Chair recognized Sen. D'Allesandro to speak.)

SENATOR D'ALLESANDRO: Thank you, Madam President. Just to validate what Sen. Burling said, this was all part of the budget process. Commissioner O'Leary, who was our DOT Commissioner at the time, came to us, presented his reorganization plan. We put the reorganization plan in

the budget, and this is consistent with that activity and with that action that was taken, and, in essence, completes the reorganization of DOT. Thank you, Madam President.

The question is on the adoption of the committee recommendation of Ought to Pass on SB 326-FN.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 366, relative to the operation of the state suggestion and extraordinary service award program. Executive Departments and Administration Committee. Ought to Pass, Vote 5-0. Senator Downing for the committee.

SENATOR DOWNING: Thank you, Madam President. I move Senate Bill 366 ought to pass. This bill clarifies certain portions for the State Suggestion and Extraordinary Service Award Program. This amends RSA 15-B:2, the monetary and non-monetary awards under the suggestion of its program. There is a State Suggestion and Extraordinary Service Award Evaluation Committee with three state employees appointed by the Governor, whom should be selected from a list provided by the certified public employees bargaining unit and they serve two years. This bill will raise the number of employees to four. This is a housekeeping bill, and I would request that you please join the ED&A Committee in ought to pass. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on SB 366.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 413, authorizing the department of resources and economic development to retain the administrative fee for certain disposals of state lands. Executive Departments and Administration Committee. Ought to Pass, Vote 5-0. Senator Kelly for the committee.

SENATOR KELLY: Thank you, Madam President. I move SB 413 ought to pass. The purpose of this legislation is to allow any administrative fees received for disposal of any state land which were originally acquired by the Department of Resources and Economic Development to be retained by this particular department. Currently, state agencies charge an administrative fee for the disposal of real property. The fee, being at least \$1,100, is approved by the Long-Range Capital Planning Committee and deposited into the General Highway, Turnpike or Fish and Game, depending on which fund initially purchased the property. However, at the present time any administrative fees generated by the Department of Resources and Economic Development go directly to the General Fund. This legislation defines that fees generated by disposal of real property, originally required –acquired by the Department of Resources and Economic Development will be deposited in the Department of Resources and Economic Development Fund. Specifically, these funds shall be deposited into a separate account for the management of the state forest land. Please join the ED&A Committee ought to pass. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on SB 413.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 325-FN-A, relative to child care provider reimbursement rates. Finance Committee. Ought to Pass with Amendment, Vote 7-0. Senator Sgambati for the committee.

Sen. Sgambati, Dist. 4
January 23, 2008
2008-0208s
05/09

Amendment to SB 325-FN-A

Amend the bill by replacing all after the enacting clause with the following:

1 Department of Health and Human Services; TANF Child Care Co-payments. For the 2009 fiscal year, the appropriation to the department of health and human services for TANF child care co-payments in the restricted class line 94 of 2007, 262:1. 05, 01, 06, 08, 02, shall be transferred to the unrestricted child care class line 93 of PAU 05, 01, 06, 08, 02 for the 2009 fiscal year.

2 Footnote Amended; Child Care Reimbursement Rates. Amend the budget footnote following PAU 05, 01, 06, 07, 01 as inserted by 2007, 262 as follows:

Strike Out:

FROM THE AMOUNTS APPROPRIATED HEREIN THE DEPARTMENT SHALL PROVIDE A 5% RATE INCREASE IN FY 08 EFFECTIVE JULY 1, 2007, AND A 5% RATE INCREASE IN FY 09 EFFECTIVE JULY 1, 2008 FOR CHILDCARE PROVIDERS, A 2% RATE INCREASE IN FY 08 EFFECTIVE JULY 1, 2007, AND A 2% RATE INCREASE IN FY 09 EFFECTIVE JULY 1, 2008 FOR RESIDENTIAL PROVIDERS, AND A 2% RATE INCREASE IN FY 08 EFFECTIVE JULY 1, 2007, AND A 2% RATE INCREASE IN FY 09 EFFECTIVE JANUARY 1, 2009 FOR ANCILLARY SERVICE PROVIDERS.

Insert in place thereof:

FROM THE AMOUNTS APPROPRIATED HEREIN, THE DEPARTMENT SHALL PROVIDE A 5% RATE INCREASE IN FY 08 EFFECTIVE JULY 1, 2007 AND RATE ADJUSTMENTS BY TYPE OF PROVIDER CONSISTENT WITH THE OPERATING BUDGET AND FEDERAL CHILD CARE AND DEVELOPMENT FUND STATE PLAN REQUIREMENTS IN FY 09 EFFECTIVE JULY 1, 2008 FOR CHILDCARE PROVIDERS; A 2% RATE INCREASE IN FY 08 EFFECTIVE JULY 1, 2007, AND A 2% RATE INCREASE IN FY 09 EFFECTIVE JULY 1, 2008 FOR RESIDENTIAL PROVIDERS; AND A 2% RATE INCREASE IN FY 08 EFFECTIVE JULY 1, 2007 AND A 2% RATE INCREASE IN FY 09 EFFECTIVE JANUARY 1, 2009 FOR ANCILLARY SERVICE PROVIDERS.

3 Effective Date. This act shall take effect upon its passage.

MOTION TO TABLE

Sen. Sgambati moved to have SB 325-FN-A laid on the table.

Motion adopted.

LAID ON THE TABLE

SB 325-FN-A, relative to child care provider reimbursement rates.

SB 354-FN-A, establishing a spending cap on state budget requests. Finance Committee. Inexpedient to Legislate, Vote 6-1. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you, Madam President. I move Senate Bill 354 inexpedient to legislate. The Finance Committee believes this bill is both unnecessary and potentially quite harmful. This bill takes away the Legislature's ability to craft a budget that addresses the needs of the state and its citizens. In actuality, the bill only applies to

a very small portion of the budget as the vast majority of our budget is made up of federal funds and other funds, and this cap does not apply to any expenditures that are contingent upon federal funding. This is a Legislature made up of 424 members. We are the third largest legislative body in the English-speaking world. This Legislature works tirelessly to serve this state well, and if the citizens aren't satisfied with the work done by the Legislature, they have the opportunity to select new members every two years. It's a matter of public record that New Hampshire citizens bear one of the lowest tax burdens in the nation. Our tax burden is 49th, and it has gone down from 8.7 percent in 1970 to 8 percent in 2007. We continue to pass balanced budgets without new taxes. We actually repeal taxes and we have done that over the last bienniums. There's no evidence to support a need for a spending cap that will take away the Legislature's ability and mandate to do their job. The Finance Committee asks your support for the motion of inexpedient to legislate. Thank you, Madam President.

(The Chair recognized Sen. Kenney to speak.)

SENATOR KENNEY: To speak, Madam President. I think it's time that we need to face the facts that there's a spending problem in state government. And that I believe the Governor's budget was not keeping with what we could afford. And there's been some indication that we passed a balanced budget. I'm not so sure we did. One of the things that I realized, and many of us realized last year, was that what we passed as a budget was not going to meet our revenue projections. And there was strong indications out there that that was not going to happen. You can go back to the House Ways and Means Committee, with long-term members on there who indicated that our dollars were not going to match—our revenue dollars were not going to match with what we were going to spend. It's interesting to note that not only across the country, but also in the State of New Hampshire, there's a people's tax revolt that's going on. You only have to look at Dover to understand that in Dover they passed a tax cap because taxes were getting out of hand. There are 30 states around the country that have passed tax with spending caps, and it's because people are starting to realize that we have limited resources. We look to the federal government. In the future years we're not going to be able to look to the federal government. We know we're getting fewer highway dollars. We know we're getting fewer Medicare and Medicaid dollars. We know that the fuel costs are going up, and we know that taxes are going up, particularly property taxes. Now, state government, arguably in New Hampshire, does a good job. We do have one of the lowest tax burdens in the country, but we can do even better than that. And I believe that when communities like Dover and my community of Farmington, which had a 2 percent across-the-board's cuts this year, that suddenly the local municipalities are providing leadership on this issue, and that I think state government has a role to at least try to address it and try to reign in the spending that has been going on. Thank you, Madam President.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on SB 354-FN-A.

Motion of Inexpedient to Legislate adopted.

Sen. Kenney is in opposition to the motion of Inexpedient to Legislate on SB 354-FN-A.

SB 448-FN-A, relative to increasing the staff of the charitable trust unit of the department of justice and making an appropriation therefor. Finance Committee. Inexpedient to Legislate, Vote 7-0. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you, Madam President. I move Senate Bill 448 inexpedient to legislate. This bill would authorize a new position at the Department of Justice. This was not a priority position during the last budget cycle, and the Governor chose not to submit it as part of his budget proposal. The Finance Committee believes that it would be more appropriate to address this request during the next budget process: another example of the 424-member manifestation of how to control spending. The Finance Committee asks your support for the motion of inexpedient to legislate. Thank you, Madam President.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on SB 448-FN-A.

Motion of Inexpedient to Legislate adopted.

SB 498, relative to state guarantees of certain municipal debt issues. Finance Committee. Ought to Pass, Vote 7-0. Senator Janeway for the committee.

SENATOR JANEWAY: Thank you, Madam President. I move Senate Bill 498 ought to pass. This bill reduces from \$430 million to \$210 million the level of state guarantees of certain municipal bond debt in four different categories: Pollution Control, School Buildings, Solid Waste and Superfund Clean-up. This bill was requested by the State Treasurer. The highest total amount the State has ever guaranteed under this program is 266 million. Since the bond rating agencies look at the potential guarantees as well as the actual – and it actually appears in this offering circular that I called attention to earlier – it behooves us to lower the ceiling. Doing so could have a slight positive impact on our state's bond rating. Senate Bill 498 leaves us with enough capacity to take care of any emergency that might arise, since the State currently has only 107 million of municipal debt guarantees outstanding versus the revised ceiling of 220 million. Over the years, it has become much easier and less costly for municipalities to borrow money through the Municipal Bond Bank, which is one reason this can be cut back.

And I might, in mentioning the Municipal Bond Bank, although I haven't gotten any questions about this, you probably are all aware that the two leading municipal bond insurance companies are now in real jeopardy because of their activity in insuring collateralized debt obligations which are all part of the sub prime mess, so that bonds that are insured by those two companies are not viewed quite as favorably these days. Whether it is good judgment, foresight, or a little bit of luck, the Municipal Bond Bank works with a different company known as FSA which did not engage in these practices, so we can sleep easier knowing that the bond banks got the proper insurance with a strong company. So how could you not like this bill? (Laughter) It has no cost attached to it, and it might just save us a little money. So please don't kick or punt, but pass this bill. (Laughter)

The question is on the adoption of committee recommendation of Ought to Pass on SB 498.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 324-FN, consolidating all substance abuse services in the office of alcohol and drug abuse prevention within the department of health and human services. Health and Human Services Committee. Ought to Pass with Amendment, Vote 6-0. Senator Sgambati for the committee.

Sen. Sgambati, Dist. 4

January 18, 2008

2008-0165s

01/09

Amendment to SB 324-FN

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraph; Office or Division for Substance Abuse. Amend RSA 126-A:4 by inserting after paragraph II the following new paragraph:

II-c. Notwithstanding any other provision of law to the contrary, and to ensure the implementation of a comprehensive and integrated approach to the problem of substance abuse, the commissioner shall establish a single office or division within the department for the administration of all departmental substance abuse prevention, intervention, and treatment policy, programs, activities, and services. Such office or division shall work with other executive branch departments and agencies and the governor's commission on alcohol and drug abuse prevention, intervention and treatment to ensure the effective and coordinated use of state and federal resources. Such office or division shall have at least the same status within the department as the unit of the department responsible for the administration of public health services.

2 New Paragraph; Governor's Commission on Alcohol and Drug Abuse Prevention, Intervention, and Treatment; Response to Written Requests. Amend RSA 12-J:2 by inserting after paragraph III the following new paragraph:

IV. All executive branch departments shall respond promptly to written requests from the commission for information concerning the alcohol and drug abuse prevention, intervention, and treatment programs and services provided by them and the costs and funding sources for such programs and services.

3 Governor's Commission on Alcohol and Drug Abuse Prevention, Intervention, and Treatment; Meetings and Reports. RSA 12-J:4 is repealed and reenacted to read as follows:

12-J:4 Meetings and Reports.

I. The commission shall meet at least 4 times each year and may convene public hearings as necessary to promote the goals of the commission.

II. The commission shall submit an annual report to the governor, speaker of the house of representatives, and president of the senate by November 1 of each year regarding the activities of the commission. The first annual report shall be due November 1, 2008. The annual report shall:

(a) Identify alcohol and drug abuse prevention, intervention, and treatment services and programs provided by state departments and agencies or funded in whole or in part by state or federal funds;

(b) Indicate the progress made during the prior year toward the implementation of the statewide plan developed by the commission pursuant to RSA 12-J:3, I;

(c) Recommend any revisions to the statewide plan developed pursuant to RSA 12 -J:3, I;

(d) Identify and prioritize unmet needs for prevention, intervention, and treatment;

(e) Indicate the progress, or lack thereof, in addressing the unmet needs;

(f) Recommend initiatives to address the unmet needs;

(g) Specify the resources and any legislation necessary to support existing programs for prevention, intervention, and treatment and to develop, implement, support, and evaluate the initiatives recommended by the commission; and

(h) In even-numbered years the report may include specific recommendations for funds to be included in the next state biennial budget to support alcohol and drug abuse prevention, intervention, and treatment services and programs.

III. To assist the commission in the timely completion of its annual report, each commission member that is an executive branch department or entity shall provide the information specified in paragraph II for its department or entity to the commission on or before September 1 of each year

4 Effective Date. This act shall take effect 60 days after its passage.

2008-0165s

AMENDED ANALYSIS

This bill requires the commissioner of the department of health and human services to establish a single office or division within the department for the administration of all departmental substance abuse prevention, intervention and treatment policy, programs, activities and services. This bill also clarifies the meetings and the content of the annual report required of the governor's commission on alcohol and drug abuse prevention, intervention, and treatment.

SENATOR SGAMBATI: Thank you, Madam President. I move Senate Bill 324 ought to pass with amendment. The bill requires the Commissioner of the Department of Health and Human Services to consolidate all substance abuse services within the department to a single entity. It also requires coordination between the Governor's Commission and the Department. It is intended to improve the use of our state's resources in addressing the growing problem of substance abuse and alcohol, for both alcohol and drugs. It corrects an over-organized and under-funded service system by consolidating responsibilities for prevention and treatment, which are now split into three divisions and two offices. It creates a more efficient and accountable method of serving individuals in need of these services. And while reorganization bills might not be the most exciting thing that we deal with, I believe that this is one of the most important bills that we'll deal with this Session. It uses limited resources; we have to target them to not coordination, but service and treatment for people. The bill received widespread support, and the Committee requests your vote of ought to pass with amendment on Senate Bill 324-FN. Thank you, Madam President.

The question is on the adoption of Committee Amendment 0165s.

Committee Amendment 0165s adopted.

(The Chair recognized Sen. Gatsas for a question of the Chair.)

SENATOR GATSAS: Is this going to Finance?

PRESIDENT LARSEN: This is indicated to go to Finance, yes.

SENATOR GATSAS: Thank you.

The question is on the adoption of Ought to Pass as Amended on SB 324-FN.

Motion of Ought to Pass as Amended adopted, bill ordered to Committee on Finance (Rule 26).

SB 466, relative to probate court jurisdiction over special needs trust. Health and Human Services Committee. Ought to Pass with Amendment, Vote 4-0. Senator Sgambati for the committee.

Health and Human Services

January 16, 2008

2008-0127s

09/10

Amendment to SB 466

Amend the bill by replacing all after the enacting clause with the following:

1 Probate Court Jurisdiction; Creation of Special Needs Trusts. Amend RSA 547:3, I(c) to read as follows:

(c) The interpretation and construction of wills and the **creation by judgment or decree**, interpretation, construction, modification, and termination of those trusts described in RSA 564-A:1, I.

2 Certain Provisions Regarding Trusts; Definitions. Amend RSA 564-A:1, I to read as follows:

I. "Trust" means an express trust created by: **a judgment or decree of the probate court, including a special needs trust authorized by 42 U.S.C. 1396p(d)(4)(A) and (C); and** a trust instrument, including a will, whereby a trustee has the duty to administer a trust asset for the benefit of a named or otherwise described income or principal beneficiary, or both[;]. "Trust" does not include a resulting or constructive trust, a business trust which provides for certificates to be issued to the beneficiary, an investment trust, a voting trust, a security instrument, a trust created by the judgment or decree ~~of a~~ **by any other** court, a liquidation trust, or a trust for the primary purpose of paying dividends, interest, interest coupons, salaries, wages, pensions or profits, or employee benefits of any kind, an instrument wherein a person is nominee or escrowee for another, a trust created in deposits in any financial institution, or other trust the nature of which does not admit of general trust administration;

3 Uniform Trust Code; Subject Matter Jurisdiction. Amend RSA 564-B:2-203(a) to read as follows:

(a) Except as provided in subsection (b) of this section, the probate court shall have exclusive jurisdiction of the **creation by judgment or decree**, interpretation, construction, modification, termination, and administration of those trusts described in RSA 564-A:1, I, and over the appointment, removal, and surcharge of trustees of such trusts.

4 Uniform Trust Code; Methods of Creating Trusts. Amend RSA 564-B:4-401(2) and (3) to read as follows:

(2) declaration by the owner of property that the owner holds identifiable property as trustee; ~~or~~

(3) exercise of a power of appointment in favor of a trustee; **or**

(4) **judgment or decree of a court.**

5 Effective Date. This act shall take effect upon its passage.

SENATOR SGAMBATI: Thank you, Madam President. I move Senate Bill 466 ought to pass with amendment. This bill grants Probate Court jurisdiction over certain – creation of certain special needs trust. We

passed a bill last Session that exempted certain distributions from trusts and that proceeds from those can be exempt from the Medicaid eligibility decisions. At that time, however, there were concerns raised about potential abuses of trusts. So this bill was developed to answer those concerns. It makes clear that the Probate Courts have the authority to create a special needs trust for the benefit of a person with disabilities who does not have a family member available to correct – to create one for them. Trusts created by the courts, much like trusts created pursuant to a guardianship, will remain under Probate Court supervision and subject to annual accounting. The bill will allow for greater transparency of the trust and will improve the supervision over the trust and the trustees. Supervision ensures that the trustees will not financially exploit the individual or unwittingly engage in patterns of transactions that could have unintended consequences for Medicaid eligibility. The bill is a product of months of cooperative work between the Probate Court, DHHS, and members of the private bar who specialize in these trusts. The Health and Human Services Committee asks your support of Senate Bill 466 and asks for your vote of ought to pass with amendment. Thank you, Madam President.

The question is on the adoption of Committee Amendment 0127s. Committee Amendment 0127s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 466.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 446, allowing probate court judges and district court justices to sit on either court in certain circumstances. Judiciary Committee. Ought to Pass with Amendment, Vote 5-0. Senator Clegg for the committee.

**Senate Judiciary
January 23, 2008
2008-0196s
03/09**

Amendment to SB 446

Amend the bill by replacing all after the enacting clause with the following:

1 District Courts; Assignment of Judges. Amend RSA 502-A:5-a to read as follows:

502-A:5-a Assignment of Judges. After assessing caseload needs and requirements under exigent circumstances and consulting with the administrative judges, the chief justice of the supreme court may assign from a precertified list of judges any district court justice to hear cases in the probate court on a temporary basis. ***For purposes of this section only, "exigent circumstances" shall mean the unavailability of a probate court judge for a period of time that would cause delay or a burden on the rights of litigants in a particular matter.***

2 Judges of Probate and Their Jurisdiction; Assignment of Judges. Amend RSA 547:38 to read as follows:

547:38 Assignment of Judges. After assessing caseload needs and requirements under exigent circumstances and consulting with the administrative judges, the chief justice of the supreme court may assign from a precertified list of judges any probate court judge to hear cases in the district court on a temporary basis. ***For purposes of this section***

only, "exigent circumstances" shall mean the unavailability of a district court judge for a period of time that would cause delay or a burden on the rights of litigants in a particular matter.

3 Effective Date. This act shall take effect upon its passage.

2008-0196s

AMENDED ANALYSIS

This bill clarifies the circumstances under which probate court judges and district court justices may sit on either court.

SENATOR CLEGG: Thank you, Madam President. I move Senate Bill 446 ought to pass with an amendment. This legislation deals with allowing the courts to have Probate Court judges and District Court judges sit in on either court in certain circumstances. When this legislation was brought forward a few years ago, the Senate amended the language to include the words, "under exigent circumstances." The court has taken a very narrow view of this language and rarely moved judges around. The administrative judges still see the need to be able to have various judges sit in on other courts and asked for clarification of the term "exigent circumstances." The Judiciary Committee amendment provides a definition of "under exigent circumstances" as a circumstance that would cause delay or a burden on the rights of litigants in a particular matter. This will allow the courts to have more flexibility in serving the public. The Judiciary Committee recommends Senate Bill 446 be adopted with amendment and asks for your support. Thank you.

The question is on the adoption of Committee Amendment 0196s. Committee Amendment 0196s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 446.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 487, clarifying the law regarding bail pending appeal. Judiciary Committee. Ought to Pass, Vote 5-0. Senator Reynolds for the committee.

SENATOR REYNOLDS: Thank you, Madam President. I move SB 487 ought to pass. This legislation merely ensures that the statutory language reflects the current court practice. When a judge receives a request regarding bail pending appeal, granting it is not technically possible because the law permits it only if an appeal is filed. Appeals obviously cannot be immediately filed after a verdict. Therefore, judges read into the law that bail can be granted if the litigant will be filing an appeal within a timely manner and that the appeal is not likely to be viewed as being frivolous. SB 487, in effect, makes the law match current practice. The Judiciary Committee respectfully recommends that SB 487 be adopted and asks for your support. Thank you, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on SB 487.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 367, relative to the date of the final property tax bill in municipalities that bill quarterly. Public and Municipal Affairs Committee. Ought to Pass, Vote 4-0. Senator DeVries for the committee.

SENATOR DEVRIES: Thank you, Madam President. I move that Senate Bill 367 ought to pass. This bill clarifies the definition of "date of

final tax bill” for municipalities that bill quarterly, and is a request of the Board of Tax and Land Appeals. This legislation corrects a minor inconsistency in statute and helps the City of Concord, which is the only municipality in New Hampshire that currently bills quarterly. The Public and Municipal Affairs Committee asks for your support for passage of Senate Bill 367. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on SB 367.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 364, relative to vehicle weight tolerance. Transportation and Interstate Cooperation Committee. Ought to Pass, Vote 5-0. Senator Letourneau for the committee.

SENATOR LETOURNEAU: Thank you, Madam President. I move Senate Bill 364 ought to pass. This bill requires a law enforcement officer to allow a tolerance of 5 percent above a certain specified weight limitations for vehicles traveling on New Hampshire roads. This bill will clarify a 2005 highway tolerance bill that has had some source of confusion. There are situations where a truck hauling a load of straw, hay, gravel, bark mulch and logs, may load up just under the specified weight limit and while on the road, that truck, will run into rain or snow, which can add extra weight to the vehicles. A similar thing happens when you're hauling fuel; if you load it up in the morning and you're traveling on the road and the load heats up, it gets heavier. So the 5 percent tolerance will take that into consideration. There was concern expressed in the Committee about bridges that have been red-listed and posted with a specific weight limit. The Committee was assured by the Department of Transportation that the possibility of a truck carrying an additional 5 percent as allowed under this law is currently taken into consideration when posting weight limits and that bridges can take that extra weight. Please join the Transportation, Interstate Cooperation Committee and vote ought to pass on Senate Bill 364. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on SB 364.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

MOTION TO REMOVE FROM THE TABLE

Sen. Sgambati moved to have SB 325-FN-A removed from the table.

Motion adopted.

SB 325-FN-A, relative to child care provider reimbursement rates.

The question is on the adoption of Committee Amendment 0208s.

Sen. Sgambati, Dist. 4

January 23, 2008

2008-0208s

05/09

Amendment to SB 325-FN-A

Amend the bill by replacing all after the enacting clause with the following:

1 Department of Health and Human Services; TANF Child Care Co-payments. For the 2009 fiscal year, the appropriation to the department of health and human services for TANF child care co-payments in the

restricted class line 94 of 2007, 262:1. 05, 01, 06, 08, 02, shall be transferred to the unrestricted child care class line 93 of PAU 05, 01, 06, 08, 02 for the 2009 fiscal year.

2 Footnote Amended; Child Care Reimbursement Rates. Amend the budget footnote following PAU 05, 01, 06, 07, 01 as inserted by 2007, 262 as follows:

Strike Out:

FROM THE AMOUNTS APPROPRIATED HEREIN THE DEPARTMENT SHALL PROVIDE A 5% RATE INCREASE IN FY 08 EFFECTIVE JULY 1, 2007, AND A 5% RATE INCREASE IN FY 09 EFFECTIVE JULY 1, 2008 FOR CHILDCARE PROVIDERS, A 2% RATE INCREASE IN FY 08 EFFECTIVE JULY 1, 2007, AND A 2% RATE INCREASE IN FY 09 EFFECTIVE JULY 1, 2008 FOR RESIDENTIAL PROVIDERS, AND A 2% RATE INCREASE IN FY 08 EFFECTIVE JULY 1, 2007, AND A 2% RATE INCREASE IN FY 09 EFFECTIVE JANUARY 1, 2009 FOR ANCILLARY SERVICE PROVIDERS.

Insert in place thereof:

FROM THE AMOUNTS APPROPRIATED HEREIN, THE DEPARTMENT SHALL PROVIDE A 5% RATE INCREASE IN FY 08 EFFECTIVE JULY 1, 2007 AND RATE ADJUSTMENTS BY TYPE OF PROVIDER CONSISTENT WITH THE OPERATING BUDGET AND FEDERAL CHILD CARE AND DEVELOPMENT FUND STATE PLAN REQUIREMENTS IN FY 09 EFFECTIVE JULY 1, 2008 FOR CHILDCARE PROVIDERS; A 2% RATE INCREASE IN FY 08 EFFECTIVE JULY 1, 2007, AND A 2% RATE INCREASE IN FY 09 EFFECTIVE JULY 1, 2008 FOR RESIDENTIAL PROVIDERS; AND A 2% RATE INCREASE IN FY 08 EFFECTIVE JULY 1, 2007 AND A 2% RATE INCREASE IN FY 09 EFFECTIVE JANUARY 1, 2009 FOR ANCILLARY SERVICE PROVIDERS.

3 Effective Date. This act shall take effect upon its passage.

(The Chair recognized Sen. Sgambati to speak to the committee amendment.)

SENATOR SGAMBATI: Yes, thank you, Madam President. I move Senate Bill 325 ought to pass, and we are voting on the amendment that's in the Calendar. As I stated at the hearing, this bill has been brought to you by the federal government. In a recent review of our child care rate structure the feds determined that the state rate structure for child care reimbursement is out of compliance with the requirements of the Child Care Development Block Grant. In order to protect our federal block grant dollars, which is about \$17 million, a revised structure has been proposed. The Department of Health and Human Services and child care providers have worked to develop a new reimbursement system which centers – it changes it from giving different rates to different types of eligibility. The new rate structure creates one payment for different levels of care instead of income levels. It also increases the family copay. Both of those changes were required by the federal government. The cost, if it was done alone, would exceed a million dollars. In order to stay within the state allotment for child care dollars, Senate Bill 325 proposes a change to House Bill 2. The bill would reallocate money from TANF-enhanced payments to the regular child care lines, and in the second year of the biennium would use some of the 5 percent rate increase for child care providers by doing those two actions; there's no new cost to the State of restructuring the rate system. All providers will get some increase. They'll get their 5 percent increase in State fiscal year '08. In '09 the rate distribution or the rate increase is distributed unevenly, but it brings us all to a compliant rate structure. No provider will lose

money and some will still get an increase in the second year. The solution proposed for your consideration has been a great number of hours of work between the Department and child care providers, and we need your support in protecting these federal funds. So I ask you to join the Finance Committee and vote Senate Bill 325 ought to pass. Thank you, Madam President.

(The Chair recognized Sen. Burling.)

PARLIAMENTARY INQUIRY

SENATOR BURLING: Just a parliamentary inquiry, Madam President. The motion is ought to pass with amendment, and we're talking about the amendment that's in the Calendar?

PRESIDENT LARSEN: That is correct.

SENATOR BURLING: Thank you. I'm sorry, I got lost there for a minute.

(The Chair recognized Sen. Gatsas for a question of Sen. Sgambati.)

SENATOR GATSAS: Senator, the balance in the TANF Reserve account at the end of fiscal year 2010 is 8.2 million.

SENATOR SGAMBATI: That's correct.

SENATOR GATSAS: Does this bill affect it in any way? Does it reduce that amount or is there a shifting of dollars from another account?

SENATOR SGAMBATI: There is no impact on the TANF Reserve Fund. That stays intact and stays whole. The account that it's moved from were enhanced payments to TANF providers of child care. It was an incentive bonus for those people who were accepting state rates for TANF clients. They will get an enhanced bonus in '08, but not in '09. But within the new rate structure, they will get a bonus anyway. So we're redirecting how we use a different appropriation, not the TANF Reserve Fund.

SENATOR GATSAS: Follow-up. Is that retroactive to July of '07?

SENATOR SGAMBATI: No, it is not. In July of '07 – in fiscal year '08, nothing changes. The providers will receive the 5 percent increase across the board as budgeted. The TANF-enhanced payment will go forward to those providers of TANF child care. In '08, the 5 percent rate is changed, as you'll see in the second paragraph of the amendment, and the TANF Reserve, and those two pots of money combined make up for the cost of the new rate structure.

SENATOR GATSAS: Follow-up. If I can ask you to look at line 19 of the amendment – well, it's actually – it's in the book, the white one. I don't know if they ...

SENATOR SGAMBATI: It's not in mine.

SENATOR GATSAS: Okay. Sorry. Let me see if I can find it in the Calendar. Where you see it says, "Inserted in place thereof."

SENATOR SGAMBATI: Right.

SENATOR GATSAS: If you look at the second line down, "Increase in fiscal year '08, effective July 1, 2007."

SENATOR SGAMBATI: Right.

SENATOR GATSAS: So it is a retroactive to July of '07?

SENATOR SGAMBATI: No. The beginning of the – the end of the first line, "The Department shall provide a 5 percent rate increase in fiscal

year '08, effective July 1, '07, and rate adjustments by provider type consistent with the operating budget and the federal Child Care Development Block Grant plan in fiscal year '09." So '08 stays as is, and as we voted in House Bill 2, '09 changes going forward.

SENATOR GATSAS: Okay.

(The Chair recognized Sen. D'Allesandro to speak.)

SENATOR D'ALLESANDRO: Just briefly. Thank you, Madam – thank you, Madam President. The Department of Health and Human Services came to us. These changes had to be made to comply with the federal mandate, and we had a period of time in which to make these adjustments. There's no change in the appropriation. There were two lines in the budget that could not be accessed unless we made these changes, and that's why these changes were made. It's within our – it's within our existing appropriation, and it doesn't touch the TANF Reserve. Thank you, Madam President.

The question is on the adoption of Committee Amendment 0208s. Committee Amendment 0208s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 325-FN-A.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

(The Chair recognized Sen. D'Allesandro to speak.)

SENATOR D'ALLESANDRO: Thank you, Madam President. Madam President, Senate Bill 495-FN, prohibiting internet solicitation and exploitation of children, does not need to come to Finance. That bill will be heard later, but it does not need to come to Finance. Finance is waiving that, and under our Rules, I'm making that announcement now. Thank you, Madam President. It's Senate Bill 495-FN. It's not on the Calendar.

(The Chair recognized Sen. Foster for a motion.)

RESOLUTION

Sen. Foster moved that the Senate now adjourn from the Early Session, that the business of the Late Session be in order at the present time, that all bills and resolutions ordered to third reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

Motion to adjourn adopted.

Adjournment from Early Session.

LATE SESSION

Third Reading and Final Passage

SB 325-FN-A, relative to child care provider reimbursement rates.

SB 326-FN, relative to salaries for certain unclassified positions.

SB 364, relative to vehicle weight tolerance.

SB 366, relative to the operation of the state suggestion and extraordinary service award program.

SB 367, relative to the date of the final property tax bill in municipalities that bill quarterly.

SB 413, authorizing the department of resources and economic development to retain the administrative fee for certain disposals of state lands.

SB 426, establishing a committee to study the current definition of the term “community benefit” applicable to nonprofit health care providers.

SB 446, allowing probate court judges and district court justices to sit on either court in certain circumstances.

SB 463, establishing an investment committee and an audit committee in the New Hampshire retirement system.

SB 466, relative to probate court jurisdiction over special needs trust.

SB 470, allowing lobbyists and those connected with lobbyists to sit on committees established by the judicial branch.

SB 473, naming the Prisoners of War/Missing in Action Memorial in Hesky Park in the town of Meredith.

SB 487, clarifying the law regarding bail pending appeal.

SB 498, relative to state guarantees of certain municipal debt issues.

SB 499-FN, relative to penalties for unauthorized disclosure of confidential matters in legislative ethics proceedings.

SCR 5, urging that federal, state, and local governments work with broadcasters and consumer groups to inform New Hampshire residents of the 2009 digital broadcast conversion.

ANNOUNCEMENTS

(Sen. Hassan introduced Maggie Leuzarder, new Legislative Aide.)

SENATOR BARNES (RULE 44): Thank you, Madam President. I think it's a Rule 42, I want to take, or a 44, whatever the number is. I get them confused. I just want to thank my colleagues for what you did last week. Every one of you here, you voted unanimously for a couple of Joint Resolutions; one of them concerning the VA Hospital, and the other one, the POW issue. I had made the statement many times that those resolutions go in a round basket when they get to Washington. During the conversation last week, I mentioned the fact that I'd appreciate it if folks would make phone calls or write letters to the various Congressional delegation people. Apparently that has happened. I think you all got a copy of my letter that I sent out. I sent it to the four delegates and also to the President of the United States. Well, yesterday I was thrilled to see that Sen. Sununu, Carol Shea-Porter and Judd Gregg, they didn't send me letters back to my letter, but there have been comments in the newspaper that they have contacted the Honorable James Peake, Secretary of Veterans Affairs, letting him know their great concern for our VA Hospital. There was no mention in those articles, and maybe the letters are down on my desk, the returned letters concerning the POW, but we'll deal with that later. I think it's important that three of our delegations so far, and I'm sure Rep. Hodes, Congressman Hodes, is probably getting one in the mail, it's probably down on my desk right now as I speak. But, it's great, you know. “Oh, we're concerned about this.” Oh, this and that and the other thing. Well, I'm going to tell you something. Tomorrow morning or maybe tonight it's all forgotten, so I'm going to ask you guys and gals, my colleagues, to keep pushing on this thing. At least it's the first time that three of our Congressional delegation have answered. And they didn't mention – oh yes, Sen. Sununu did

mention that the New Hampshire Senate passed; the other two folks didn't mention the New Hampshire Senate, but I'm sure their staff saw the article that this group, this fine group of 24, said they wanted to do something about it. But the battle isn't over. All this political fluff, you've all seen it. You probably –maybe you've never been guilty, but I probably have, of some of that political fluff, you guys wouldn't do that. But let's keep the pedal to the metal on this. I know you're – a lot of us in here are friendly with the different delegations. Let 'em know that it is very nice to send this letter to the Secretary, but actions speak louder than words, and I want to see some action. I don't need a letter from these birds, but the newspaper articles were great. If President Bush sends me a letter, I certainly will share it with you. But I hope the Session isn't over by the time I get it.

But the other resolution is also very important, so I hope you folks follow up with letters and conversation. I'd really appreciate you doing that. You heard about the POW/MIA today, you heard the situation, you heard Sen. D'Allesandro talk about his football buddy whose mother died still waiting for the doorbell to ring; every time it rang she thought her son was coming in the front door. What a horrible thing for parents or relatives to go through. And these birds in Washington didn't even address that. I shouldn't call them "birds." "Birds" and "birdesses." But maybe, maybe we'll get somewhere. At least it's the first time in my memory that three of them have at least responded through a newspaper, and I think that's wonderful, and you guys made that happen by that vote, and they paid attention to at least one of them, and I want to thank you all for that. But please, keep the pressure on your friends that are in the delegation.

RESOLUTION

Sen. Foster moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, referring bills to committee, scheduling hearings, sending and receiving messages, and processing enrolled bill reports and amendments.

Motion to recess adopted.

The Senate is in recess to the Call of the Chair.

HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

HB 358, relative to the procedure for listing candidates on election ballots.

HB 359-FN, relative to recovery of medical assistance from an estate.

HB 581-FN, relative to the penalty for purposely mistreating service animals.

HB 595-FN, requiring the commissioner of the department of corrections to adopt rules establishing a policy on and procedures for an internal clemency board to review and make recommendations on requests for sentence modifications.

HB 702, relative to continued jurisdiction in child protection cases.

HB 740-FN, relative to mental health services.

HB 765-FN, establishing a committee to study the financial liability for placement of a child with a disability.

HB 858-FN, relative to discount medical plan organization.

INTRODUCTION OF HOUSE BILL(S)

Sen. Foster offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Senate Clerk, House legislation numbered from **358** to **858**, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

Resolution adopted.

First and Second Reading and Referral

HB 358, relative to the procedure for listing candidates on election ballots. (Election Law and Internal Affairs)

HB 359-FN, relative to recovery of medical assistance from an estate. (Health and Human Services)

HB 581-FN, relative to the penalty for purposely mistreating service animals. (Judiciary)

HB 595-FN, requiring the commissioner of the department of corrections to adopt rules establishing a policy on and procedures for an internal clemency board to review and make recommendations on requests for sentence modifications. (Judiciary)

HB 702, relative to continued jurisdiction in child protection cases. (Judiciary)

HB 740-FN, relative to mental health services. (Health and Human Services)

HB 765-FN, establishing a committee to study the financial liability for placement of a child with a disability. (Education)

HB 858-FN, relative to discount medical plan organization. (Commerce, Labor and Consumer Protection)

January 31, 2008

2008-0348-EBA

05/01

Enrolled Bill Amendment to HB 351

The Committee on Enrolled Bills to which was referred HB 351

AN ACT clarifying that the definition of "overseas business organization" includes all foreign incorporated business organizations and all 80/20 business organizations.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to HB 351

This enrolled bill amendment makes a technical correction to the amending language.

Enrolled Bill Amendment to HB 351

Amend section 1 of the bill by replacing line 1 with the following:

1 Definitions; Water's Edge Combined Group. Amend the introductory paragraph of RSA 77-A:1, XV to read as follows:

Adopted.

January 30, 2008

2008-0332-EBA

03/10

Enrolled Bill Amendment to HB 754-FN

The Committee on Enrolled Bills to which was referred HB 754-FN

AN ACT repealing the law relative to the Maine-New Hampshire Interstate Bridge Authority.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

FOR THE COMMITTEE**Explanation to Enrolled Bill Amendment to HB 754-FN**

This enrolled bill amendment rennumbers a new RSA subparagraph.

Enrolled Bill Amendment to HB 754-FN

Amend section 4 of the bill by replacing lines 2-3 with the following: after subparagraph (268) the following new subparagraph:

(269) Moneys deposited in the Portsmouth-Kittery Bridge fund under RSA 234:66.

Adopted.

INTRODUCTION OF SENATE BILL(S)

Sen. Foster offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Senate Clerk, Senate legislation numbered from **SB 529** to **SB 530**, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

Resolution adopted.

First and Second Reading and Referral

08-2898

SB 529, changing certain references in the mental health laws. (Hassan, Dist 23; Estabrook, Dist 21; Sgambati, Dist 4; Barnes, Dist 17; Burling, Dist 5; Janeway, Dist 7; Stiles, Rock 15; Rosenwald, Hills 22; MacKay, Merr 11: Health and Human Services)

08-2895

SB 530-FN-A-LOCAL, relative to kindergarten aid. (Estabrook, Dist 21; D'Allesandro, Dist 20; Foster, Dist 13; Rous, Straf 7; Foose, Merr 1; Reeve, Belk 4; Leishman, Hills 6; L. Ober, Hills 27: Education)

Out of Recess.

LATE SESSION

Sen. Foster moved that the Senate adjourn from the Late Session.

Motion to adjourn adopted.

Adjournment from the Late Session.

February 7, 2008

The Senate reconvened at 11:00 a.m., a quorum being present.

The Reverend Canon Timothy Rich, chaplain to the Senate, offered the prayer:

Good Morning. Yesterday, for Christians around the world it was Ash Wednesday, the beginning of Lent. And in short, Lent is a time when Christians are called to reflect upon one simple basic question, which is: Am I living a good and faithful life ... the righteous life? And there's a resource for this reflection, a reading from scriptures shared by both the Jewish and Christian tradition, a reading that finds God speaking to Isaiah, who will then go and speak to the leaders of his time. I just want to share a few verses of this reading.

God says to Isaiah to say to the leaders, "To all appearances, they are a nation of right-living people, law-abiding, God-honoring. You fast, but at the same time you bicker and fight. You fast, but you swing a mean fist. The kind of fasting you do won't get your prayers off the ground. This is the kind of fast day I am after: to break the chains of injustice, free the oppressed, cancel debts. What I am interested in seeing you do is sharing your food with the hungry, inviting the homeless poor into your homes, putting clothes on the shivering ill-clad, being available to your own family. Do this and the lights will turn on, your lives will turn around at once. And then when you pray, God will answer. You'll call out for help and I'll say, 'Here I am'." Christian or Jew, atheist or theist, these words remain a good measure for the righteousness of our leadership and our lives. Let us pray:

O God of our wisdom and strength: In the bustle and busyness of work, fill us with Your energetic Spirit and remind us to pause and recall that our labors should find favor in Your sight so that all our works would do You honor by helping You renew the face of the earth. May Your Spirit bless and increase the creativity of our minds, the effort of our hands, our collaborations with colleagues, our consideration of those we serve, and our gladness for Your love and guidance. Amen

Sen. Cilley led the Pledge of Allegiance.

Sen. Clegg is excused for the day.

INTRODUCTION OF GUESTS

(No guests introduced this session.)

SPECIAL ORDER

President Larsen moved, without objection, to Special-Order Election Law and Internal Affairs Committee to the end of today's Calendar.

COMMITTEE REPORTS

SB 349, allowing continuation of judicial retirement plan benefits for judges called to full-time active military duty. Executive Departments and Administration Committee. Ought to Pass, Vote 5-0. Senator Kelly for the committee.

SENATOR KELLY: Thank you, Madam President. I move SB 249 [sic] ought to pass. This legislation was a housekeeping request by the Su-

preme Court that will add the judicial retirement plan benefits to the benefits continued for state employees called to full-time active duty. Please join the ED&A Committee, ought to pass. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on SB 349.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 385, requiring pharmacies to report an inability to fill prescriptions. Executive Departments and Administration Committee. Ought to Pass with Amendment, Vote 6-0. Senator Fuller Clark for the committee.

Senate Executive Departments and Administration

January 30, 2008

2008-0342s

08/09

Amendment to SB 385

Amend the bill by replacing all after section 2 with the following:

3 Repeal. The following are repealed:

I. RSA 318:5-a, XIX, relative to rulemaking for reports of inadequately staffed or understaffed pharmacies.

II. RSA 318:40-a, relative to reports of inadequate staffing.

4 Effective Date.

I. Section 3 of this act shall take effect July 1, 2010.

II. The remainder of this act shall take effect July 1, 2008.

2008-0342s

AMENDED ANALYSIS

This bill requires a pharmacy to report to the pharmacy board when it is unable to fill prescriptions.

The provisions of the bill are repealed in 2010.

SENATOR FULLER CLARK: Thank you very much, Madam President. I move Senate Bill 385 ought to pass with amendment. This bill requires any pharmacy that closes down during approved business hours must report to the Pharmacy Board within 15 days of having shut down its service. Consumers, most especially seniors and the chronically ill, depend on their prescriptions to be filled at the proper times and for the pharmacists to be open to the public in order for them to do so. Random acts of closure and delays on prescriptions are unacceptable. This bill, through the required reporting process, will make sure that the Pharmacy Board is aware of such situations and is a first step in an attempt to deal with denying customers a service that they deserve. ED&A Committee recommends and asks you to join them with ought to pass with amendment. Thank you.

The question is on the adoption of Committee Amendment 0342s.

Committee Amendment 0342s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 385.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 404, allowing dental school graduates to practice in an approved dental residency program. Executive Departments and Administration Committee. Ought to Pass with Amendment, Vote 6-0. Senator Cilley for the committee.

Senate Executive Departments and Administration
January 31, 2008
2008-0343s
10/04

Amendment to SB 404

Amend RSA 317-A:20, III as inserted by section 1 of the bill by replacing it with the following:

(d) Graduates from an American Dental Association accredited school from practicing in an American Dental Association accredited residency program under the supervision of a dentist holding an active license issued by the board for the duration of the residency program

SENATOR CILLEY: Thank you, Madam President. I move Senate Bill 404 ought to pass with amendment. The bill was requested by the New Hampshire Dental Society, allowing persons in a dental residency to practice under a supervising dentist without holding a license and increase access to dental care. There are ongoing efforts to attract dentists and at the same time to care for some of those not getting care to establish a dental residency program in the state. This will be a pipeline – this will be the pipeline of the increase in dental students, increase the number of externships, and increase the number of dentists. The actual setting would be in a hospital or clinic in New Hampshire, and the local supervision would be done by local dentists. This holds out great hope for our state, both because residents often choose to stay in the place where their residency training takes place, and in the process of training they are able to serve the needs of many who currently cannot access dental care. This is a coordinated effort by the Board of Dental Examiners, New Hampshire DA, Bi-State Primary Care and legislators. SB 404 will make it possible for a qualified dental school student graduate to practice under the general supervision of a New Hampshire licensed dentist accredited by a training program. We believe this bill will make it easier to establish dental residencies in which to help access to care and attract dentists to New Hampshire. Please join the ED&A Committee in ought to pass with amendment. Thank you.

The question is on the adoption of Committee Amendment 0343s.
Committee Amendment 0343s adopted.

(The Chair recognized Sen. Kenney to speak.)

SENATOR KENNEY: Thank you, Madam President. I rise in support of Senate Bill 404. One of the things that I wanted to bring out to this body's attention is that currently the general practice residency program at the Manchester VA has been put on hold. And as we've been discussing about a full-service hospital in Manchester, I would hope that we would also entertain maybe a possible resolution in the coming weeks to encourage the VA system to put forth a general practice residency program for our future dentists. So I just wanted to bring that to the attention of the body here. Thank you, Madam President.

The question is on the adoption of Ought to Pass as Amended on SB 404.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 300-FN-A, relative to death benefits for corrections officers killed in the line of duty. Finance Committee. Ought to Pass, Vote 7-0. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you, Madam President. I move Senate Bill 300 ought to pass. This bill allows corrections officers killed in the line of duty to be eligible for the death benefit. The financial impact of this bill would be a \$100,000 General Fund expenditure, only when a corrections officer is killed in the line of duty. The Governor would be authorized to draw a warrant for the \$100,000 out of monies in the treasury that are not otherwise appropriated. The Finance Committee asks your support on the motion of ought to pass. Thank you, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on SB 300-FN-A.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 303-FN, relative to special number plates. Finance Committee. Ought to Pass, Vote 7-0. Senator Sgambati for the committee.

SENATOR SGAMBATI: Thank you, Madam President. I move Senate Bill 303 ought to pass. The bill makes the issuance of certain special number plates by the director of the Division of Motor Vehicles mandatory, and adds active duty members of the armed forces to those eligible for special number plates. The Department of Safety estimates producing 15,000 pairs of plates as a result of this bill. The costs associated with the new plates, as well as the costs for programming, will be covered by monies in the plate fund, which is a dedicated revolving fund within the Highway Fund. The balance in the plate fund as of February this year was over \$4 million. The bill does not appropriate any new money, and so the Finance Committee asks for your support for the motion of ought to pass. Thank you.

(The Chair recognized Sen. Letourneau to speak.)

SENATOR LETOURNEAU: Thank you, Madam President. Recent developments from the Transportation Committee would ask that – the Gold Star Mother Plate issue has come up with a development, and I would like to have this bill held over for a week so I can offer an amendment. And so I will ask Sen. Barnes to offer an amendment – I mean offer a motion of tabling.

SENATOR BARNES: Table.

MOTION TO TABLE

Sen. Barnes moved to have SB 303-FN laid on the table.

Motion adopted.

LAIID ON THE TABLE

SB 303-FN, relative to special number plates.

SB 316-FN, expanding a death benefit for police officers and firefighters to emergency medical technicians. Finance Committee. Ought to Pass, Vote 7-0. Senator Janeway for the committee.

SENATOR JANEWAY: Thank you, Madam President. I move Senate Bill 316 ought to pass. This bill expands the death benefit currently available for police officers and firefighters killed in the line of duty to emergency medical technicians killed in the line of duty. The financial impact of this bill would be \$100,000 in General Fund expenditures, but only if an EMT is killed in the line of duty and the established eligibility criteria are met. The Governor would be authorized to draw a warrant for the \$100,000 out of monies in the treasury that are not otherwise appropriated. The Finance Committee asks your support for the motion of ought to pass. Thank you.

(The Chair recognized Sen. Burling to speak.)

SENATOR BURLING: Thank you, Madam President. I just rise to extend my thanks to Finance for these recommendations, and to remind us all, as one witness reminded me, that here are two appropriations we pray will never be made.

The question is on the adoption of committee recommendation of Ought to Pass on SB 316-FN.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 520-FN-A, requiring the state veterans council to issue a state veterans handbook biennially and making an appropriation therefor. Finance Committee. Ought to Pass, Vote 7-0. Senator Hassan for the committee.

SENATOR HASSAN: Thank you, Madam President. I move Senate Bill 520 ought to pass. This bill requires the State Veterans Council to issue a state veterans' handbook biennially. The Veterans Council estimates it will spend \$4,000 annually, beginning in fiscal year 2010, to produce the handbook. The bill as amended by the policy committee only appropriates \$1 because it is believed the Veterans Council has the ability to fund the cost of the handbook through donations, grants, bequests and other contributions. The Finance Committee asks your support for the motion of ought to pass. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on SB 520-FN-A.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 422, adding an energy section to zoning and planning master plans. Public and Municipal Affairs Committee. Ought to Pass, Vote 6-0. Senator Burling for the committee.

SENATOR BURLING: Thank you, Madam President. Madam President, I move Senate Bill 422 ought to pass. This bill amends existing law relative to master plans to include a provision relative to local energy zoning and planning. The testimony before us was very compelling that it is time for local communities to consider the question of energy policy at the local level. This bill will allow them to do that. It is, Sen. Barnes, enabling legislation, and it will be up to local communities to decide whether they wish to take advantage of the policy change in statute. The Public and Municipal Affairs Committee requests that you join us in support of Senate Bill 433 [sic]. Thank you, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on SB 422.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 423, relative to cashing of bingo winnings checks. Ways and Means Committee. Ought to Pass, Vote 5-0. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you, Madam President. I move Senate Bill 423 ought to pass. This bill will allow charities to cash checks from bingo earnings at bingo games. Current law requires that all bingo prizes over \$500 be paid by check by the charity holding the bingo game. This bill would allow the customers to cash their winning checks. This legislation would put charity bingo on the same level as charity poker tournaments. Please join the Ways and Means Committee in voting this bill ought to pass. Thank you, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on SB 423.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 458, establishing a committee to study the impact on New Hampshire revenues resulting from evasion of taxes by Massachusetts businesses. Ways and Means. Inexpedient to Legislate, Vote 5-0. Senator Downing for the committee.

SENATOR DOWNING: Thank you, Madam President. I move Senate Bill 458 inexpedient to legislate. This bill will establish a committee to study the impact on New Hampshire revenues that result from tax evasions by Massachusetts companies. The Ways and Means Committee heard testimony from the Department of Revenue that stated the Department already has the tools to track down out-of-state businesses that evade New Hampshire taxes. Currently, out-of-state businesses that do work in the State of New Hampshire pay New Hampshire taxes so there is no revenue that is being lost. That being said, the Ways and Means Committee felt that this study is not necessary at this time. Please join the Ways and Means Committee in voting inexpedient to legislate.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on SB 458.

Motion of Inexpedient to Legislate adopted.

SB 497-FN, relative to the security of bonds or notes issued to the New Hampshire Municipal Bond Bank. Ways and Means Committee. Ought to Pass, Vote 5-0. Senator Janeway for the Committee.

SENATOR JANEWAY: Thank you, Madam President. I was beginning to feel left out. I move Senate Bill 497 ought to pass. This bill has to do with the New Hampshire Municipal Bond Bank in the event of a default by a municipality that has borrowed through the bond bank. And I might add there has never been a default, knock on wood. Current law requires the treasury to withhold appropriated state aid funds to that municipality. However, there is no mechanism in the current statute to disburse those funds. This bill will enable the treasury to transfer these withheld funds to the Municipal Bond Bank to use to offset the debt of the defaulted entity. This change helps the Bond Bank and by extension, its many borrowers. So I hope that you will join the Ways and Means Committee in voting this bill ought to pass. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on SB 497-FN.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 436, enabling certain persons to vote in primaries prior to turning 18 years of age. Election Law and Internal Affairs Committee. Ought to Pass, Vote 4-0. Senator Cilley for the committee.

SENATOR CILLEY: Thank you, Madam President. I move that SB 436 ought to pass. This bill enables 17-year-olds to vote in primaries if they will be 18 years of age on the date of the general election. This is about getting more people involved in the political process and it only affects those who are eligible to vote in the general election. Other states have passed similar legislation and the Committee commended the efforts of the Legislative Youth Advisory Council for moving this issue forward here in New Hampshire and agrees that it is an appropriate step in en-

couraging our young people to become more engaged in politics. And as a member of the Committee, I must say that we heard some of the most remarkable, intelligent and informed testimony by individuals that this would affect, that I've ever heard. So I was very encouraged. The Election Law and Internal Affairs Committee requests that you support this bill. Thank you.

(The Chair recognized Sen. Burling to speak.)

SENATOR BURLING: Thank you, Madam President. I would like, Madam President, to second the comments of my colleague. The testimony we received from one 16-year-old and one slightly older child of a member of this body was intelligent, focused, articulate, and only once suggested that the members of the committee were slightly "over the hill." There is every reason for us to adopt this bill. Elections in New Hampshire are one of our great traditions. Encouraging our young people to participate as they can in the election process is right and just. And I would like to just say a word about the rumor of an argument that appeared after the hearing from the Department of Justice. I always wonder how these memos appear after the hearing is done. But the suggestion has been made that there's an issue about the question of constitutionality. The election process in which we elect state officers and federal officers involves a primary coupled to a general. It is one process by which we select the people we want to see hold office. The bill before us is designed to ensure that people who are qualified to vote in the general election get to participate in the entire process, not just bits of it. This is constitutional. I believe it is constitutional, and if you read the New Hampshire Constitution, you see that elections constitute the entire process of election, not just the final stage. Allowing young people who are qualified as 18-year-olds to vote at the general election, to participate in the primary process, is exactly the right thing. And all of us on the Committee felt strongly about this. I encourage you to join us in supporting passage of this bill.

(The Chair recognized Sen. Gatsas to speak.)

SENATOR GATSAS: Thank you, Madam President. I'm not too sure if I'm rising in opposition or in favor of this bill. I think there are some very clear discussions that have to be made. There's a piece of legislation that passed from the House, coming to this body, that says that 17-year-olds will be treated as minors. I'm not too sure if we pass this bill today, and the next bill passes, that any of these penalties are available to be enforced. So that means that any child that comes in at 17 and decides they want to register today, even though their birthday may not be for 12 more months, has no penalty facing them. So I'm not sure if I'm in favor of it or if I'm opposed to it. I guess I'm in favor of it if the legislation that came from the House stays on the books, and we ITL that bill. However, if that bill passes, then I would be opposed to this piece of legislation, because at no point would there be any enforcement. I think that's something that we should look at. I think maybe we should attempt to put this on the table, find out what happens with the next bill before we put this bill out first. The other question I have about the legislation: If it's good enough for a presidential election, and it's good enough for a state election, then why isn't it good enough for a local election? 'Cause I believe that people in Manchester, we have a young lady that was elected to the School Board at 23 years old. I think that's local participation at a young age. I think that it should apply to local elections. I don't think we should exempt 17-year-olds that are coming

in and voting on their primary day, not allowing them to vote for the general. So I guess right now I can't tell you whether I'm in favor of it or opposed to it, but I gave you the reasons of why I would favor it and the reasons why I would be opposed to it. Thank you, Madam President.

(The Chair recognized Sen. Kenney to speak.)

SENATOR KENNEY: I thought Sen. Reynolds was before me. First, I want to extend my congratulations to the sponsors, and I really appreciate them for bringing in this bill. Because as someone who's been executive director for a summer youth program for many years, I want to see young people engage the elective process. And I also have been a teacher, have witnessed a lot of apathy with our young people, and I think it's important that we get them politically engaged, 'cause they're our future generation. The only problem that I have with this bill is, really, the fact that it's not a constitutional amendment. And in this country, and in this state, any time that we've tried to change or expand voting rights, we have done it in a form of a constitutional amendment. And, as you know, when we used to be able to vote, or when people voted at the age of 21, that through constitutional amendment, we pushed it back to 18. And why did we do that? Because we had young people who were in the military who were in Vietnam who were putting their lives on the line, and they said: If we're going to serve our military, then why can't we vote, if we're going to die for our country? And that was a great argument and it was changed. We had a constitutional amendment proposal earlier last year that had to deal with changing the state Senate from, the age of requirement, to 30 to 25, which, you know, was defeated. But still, it was an attempt to get the youth more engaged in the process.

I believe we need to give the opportunity for the 18-year-olds and above the ability to vote on a constitutional amendment, to allow 17-year-olds to vote in New Hampshire primary and state primary. Additionally, along with Sen. Gatsas, I believe that this bill is flawed for one reason in that the 17-year-old will not be able to vote in local elections. They won't be able to go to the school deliberative session if it's an SB2 town; they won't be able to go to the town deliberative session if it's an SB2 town. And I think it's important to realize that if we're extending the voting rights at the state and federal level, we surely should be doing it at the local level, 'cause I believe that's truly the level in which civic engagement occurs. It's at the local level. Let them get to understand what's going on locally before we can allow them to understand what's going on at the state and federal level, at 17 years old. So, I appreciate the sponsors bringing it in. If it was a constitutional amendment, Madam President, I would vote for it in a heartbeat. But I think that if we're expanding our voting rights here in New Hampshire, that the 18-year-olds and above should have the opportunity to see, through constitutional amendment, whether they think 17-year-olds should be able to vote in our state and federal primary process. Thank you, Madam President.

(The Chair recognized Sen. Reynolds to speak.)

SENATOR REYNOLDS: Thank you, Madam President. Madam President and colleagues, I rise in support of SB 456 [sic]. As you've heard, this legislation is supported by the Legislative Youth Advisory Council. My son, James Conklin, serves on the council, as do many other young people in this state. And I'm very proud of them, and I'm proud of Rep. Carolyn Gargasz for her stewardship of them. But I've also been contacted by other 17-year-olds in my district. I got an e-mail from somebody who's a senior at Woodsville High asking me about why they could not vote in

the primary if they would be 18 by the general. And I guess I can say as a parent, as a citizen, as a taxpayer, as a Senator, that this bill will open up the doors for more young people to participate in the politics and the life of our state. What about the young man or the young woman who's about to get enlisted in the armed forces to serve our country? Shouldn't that person, who is going to put themselves in harm's way, be able to vote in the primary with regard to a presidential election, for somebody who's going to be studying policy of war and peace? What about issues having to do with healthcare? What about issues having to do with our economy, particularly when we're talking about budgetary issues right now on the national level. I would urge your support of this important bill. Let's help our young people stay more involved with what's happening in their country, and I would respectfully ask for your support. Thank you.

(The Chair recognized Sen. Letourneau to ask a question of Sen. Burling.)

SENATOR LETOURNEAU: Thank you. As you know, I was sick last week and I wasn't able to be in the committee to hear this bill.

SENATOR BURLING: We're glad to see you're better, Senator.

SENATOR LETOURNEAU: Well, thank you.

SENATOR BURLING: Since you're getting on a plane with me to go to Philadelphia this evening. (Laughter)

SENATOR LETOURNEAU: One of the questions I have as a representative of a boarder community, we have a lot of people that come up from Massachusetts to work the elections, and we see busloads of people coming up, and I wanted to know what the protections were for us, as a border community, for people that come up with a, perhaps a Massachusetts driver's license, because this says only "domiciled." I could be a 17-year-old. And I'm in favor of these people voting. As a matter of fact, when I was, just to – to give a little history – when I was younger, I had to be 21 in order to vote, as many of us here did. And I voted for the constitutional amendment to allow 18-year-olds to vote because I thought it was the right thing to do. So, this is where we are now. I noticed there's two things in here that I just want to ask a question about. You asked, "If you don't have a valid driver's license, provide the last four digits of your Social Security number." And I just want to know what that, what that does, what's that provide for us, the last four digits? And why is that in there? 'Cause I wasn't able to be at the committee hearing to find out.

SENATOR BURLING: Well, there are a variety of questions that you've asked, so let me address them in order. You mentioned your status as a person in a border community and your concern for people crossing the border. This statute's very clear. Only young people who are otherwise qualified to vote in the State of New Hampshire may vote in the State of New Hampshire at the age of 17 in a primary. In other words, all the protections that keep a 62-year-old from crossing the border and voting up here, apply to young people who are 17, but will be 18 as of the date of the general election. And the language here is the language in existing law. There is a reference that the person seeking to vote must state that I am a United States citizen, and I must be domiciled in the city or town in which I'm trying to vote. That's the current constitutional law. That is the test. We do not change that with reference to these young people. We do not do anything more or less than we do with reference to every voter in the State of New Hampshire. All we do is recognize that

the process of election is a continuum and if they're going to be 18 at the general election, they should participate in the whole process. So that would be my answer to your first question. Can you give me reference to the specific language? Oh. You're referencing the voter registration form. This is existing law.

SENATOR LETOURNEAU: It is.

SENATOR BURLING: Yes.

SENATOR LETOURNEAU: Okay.

SENATOR BURLING: We don't change that. That's the existing format of the affidavit.

SENATOR LETOURNEAU: Just a follow-up question, Madam Chair? I mean, Madam President? You referenced the 62-year-old protections, and my guess is if a 62 –

SENATOR BURLING: I just threw that out. I wasn't referring to you or me or anybody.

SENATOR LETOURNEAU: Well, any adult of age –

SENATOR BURLING: Right, right.

SENATOR LETOURNEAU: – would have to provide some valid information that they are a resident of that town and qualified to vote by producing an electric bill or a tax bill or some kind of thing that shows that they live there. I'm not sure that 17-year-olds will have those things.

SENATOR BURLING: Well, I understand that the point that you're making. In many of our communities, of course, the 17-year-old about to turn 18 will be well-known to everybody who's there. Some will come in with other forms of identification, but that's a problem of identification, not age qualification.

SENATOR LETOURNEAU: Right.

SENATOR BURLING: This bill addresses age qualification. And, in all candor, I don't think it's fair of us to apply separate tests for young people. I don't think it's fair of us to think that they will be less law-abiding.

SENATOR LETOURNEAU: I'm not suggesting that.

SENATOR BURLING: Well, I knew you weren't, but I just wanted to make it on the record. That's been an undercurrent throughout the opposition to this bill. I believe the young people of New Hampshire will see this as their civic duty, will abide by our laws, and will understand the tremendous obligation, but privilege, that voting in this state is. I just think we ought to honor them by understanding that they're able to do this, and willing and eager to do it.

SENATOR LETOURNEAU: Well, my comment is, is that while you live in a small town, I live in a community that during a presidential election has 18,000 registered voters in one polling place, and last time around there was a backlog of four hours waiting to get to vote, and therefore it's a real difficult process for these folks that are doing it, and I'm just trying to figure out how we're going to handle that. Thank you.

SENATOR BURLING: Thank you, Madam President. I would just like to say I remember about your one polling place. I was sort of hoping that you guys would open up to more polling places.

SENATOR LETOURNEAU: We don't have anyplace else.

SENATOR BURLING: Thank you, Madam President.

(The Chair recognized Sen. Gatsas for a question of Sen. Burling.)

SENATOR GATSAS: Senator, if I'm a 17-year-old and come from Massachusetts to New Hampshire, and the law that is now on the books is repealed and makes me a minor, and I come in and vote, what is the penalty going to be? Maybe I'm not phrasing it correctly.

SENATOR BURLING: Well, Senator. Madam President, if I may respond. I do think you are mixing apples and kumquats. I do not understand the point you're trying to make. This is about the privilege of voting, and what we're saying is that people who are otherwise qualified to vote at age 18 in a general election will be able to exercise their franchise, their constitutional privilege, at the moment of the primary election. You're asking me about a bill, I think, that has to do with criminal liability and the boundary line between 17- and 18-year-olds.

SENATOR GATSAS: Correct.

SENATOR BURLING: That's a "kumquat" relative to this bill.

SENATOR GATSAS: Well, let me make it something as a "kumquat" that both you and I can understand, then. 'Cause this bill is very clear. If you go to line 25 on page two, it says that "A Class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000," if I am signing this falsely. If that bill that is going to come before us reduces the age from 18 to 17, this penalty doesn't hold any "kumquat" water. (Laughter)

SENATOR BURLING: I now see the "kumquat" you are offering.

SENATOR GATSAS: Thank you.

SENATOR BURLING: In all candor, I think that's an issue to be addressed in the next bill when it comes to us. This is about policy, and that's existing law. The phrase you're referring to is existing law. I do not propose that we change existing law relative to the violation of our election laws. All I'm trying to do is give our young people the franchise to which I think they are constitutionally entitled.

SENATOR GATSAS: And I agree with you 1,000 percent.

SENATOR BURLING: Great, so let's have that discussion on the next bill.

SENATOR GATSAS: If that 17-year-old stays as an adult so that this law has teeth, so that we don't have 17-year-olds coming in and playing the game, because there are no teeth in the bill, I have a problem with that, as you should because, as Sen. Barnes will always tell us, "Never worry about what the House is going to do, let's do the Senate's business." The House has finished its business. There's a bill that's going to come before us that's going to reduce that age from 18 to 17, as a minor. So I'm sitting here saying, what's the penalty going to be if that other bill passes?

SENATOR BURLING: Senator, you're making good arguments for a different suit. I mean, this is about election policy. The points you're making to me are arguments that you should properly make, when and if that bill comes before this Senate. I have not made up my mind on that issue, and I haven't even begun to deliberate about the points you're making. But this I do feel passionately about. This is the policy that changes nothing except extending the franchise to people who have a constitutional right to exercise it.

SENATOR GATSAS: Thank you, Senator.

(The Chair recognized Sen. Barnes to ask a question of Sen. Reynolds.)

SENATOR BARNES: Thank you, Sen. Reynolds.

SENATOR REYNOLDS: You're welcome.

SENATOR BARNES: If I was hearing correctly, I heard you mention 17-year-olds dying in battle. If my memory serves me right, it was during the Korean War, which started in 1950, June 25th, there were a number of 17-year-olds that were getting killed in battle. Due to that huge outcry of the American public, the War Department came along and prohibited 17-year-olds from going into combat. I just wanted to make it clear to this body that 17-year-olds are not in combat. That came about because of the Korean War. Thank you, Senator.

SENATOR REYNOLDS: And if I may respond to that. I appreciate the Senator's comment, and he's absolutely correct. Interestingly enough, I had a constituent from New Hampton who was injured during training, and I believe there are instances where people are serving in the military who may come into harm's way in other ways other than combat, but I certainly agree with you as to the state of the law. Thank you, Senator.

SENATOR BARNES: Thank you, Senator. My second question is for Sen. Kenney.

(The Chair recognized Sen. Barnes for a question of Sen. Kenney.)

SENATOR BARNES: I certainly don't want to question the validity, 'cause I don't, your comments were very valid. But you just mentioned the 17-year-old and the 18-year-old situation in the Vietnam War. I just wanted to remind everyone in this room that since the Revolutionary War, the first war that this country as a country fought, there were 16-year-olds, 15-year-olds and what-have-you in there, but it wasn't just the Vietnam War as was mentioned. The Korean War also, as well as World War II and all the other conflicts, it has something to do with people changing the law, and making the vote go from 21 to 18. It wasn't just the Vietnam War era that did that.

SENATOR KENNEY: Oh, thank you, Sen. Barnes. I was trying to make the point that any time that we change or we expand our voting rights, that we've always done it through a constitutional amendment, and there have been points in our history, particularly in military history, where that debate has been brought out and borne, primarily because of the draft, and in the case of Vietnam and other conflicts, where people were arguing: If I can defend my country, I should be able to have the entitlement to vote.

SENATOR BARNES: Follow-up question. Would you believe since the Revolutionary War that's been the case?

SENATOR KENNEY: Sen. Barnes, you're far more – you're full of wisdom, and I can only say that you have a little bit more years on me. So if you say the Revolutionary War, I believe it.

SENATOR BARNES: One final comment I'd like to make is that the Revolutionary War –

PRESIDENT LARSEN: Can I recognize you to speak.

SENATOR BARNES: A question, "Would you believe," Senator, that the females in combat, which if I had had a vote in Washington, I would have voted against – don't boo and hiss me too loudly – however, many

females were in the Revolutionary War and the Civil War that gave their lives for this country and for the side of the nation that they were in. So there were female soldiers way back, also.

SENATOR KENNEY: I would believe that, Sen. Barnes.

(The Chair recognized Sen. Fuller Clark for a question of Sen. Burling.)

SENATOR FULLER CLARK: To return to the concerns of Sen. Letourneau, with regard to identification, it's my understanding that a driver's license with a local address on it would suffice to establish domicile; is that correct?

SENATOR BURLING: That's correct.

SENATOR FULLER CLARK: And, Sen. Burling, how many 17-year-olds do you know that don't have a driver's license?

SENATOR BURLING: In my own experience, I couldn't actually identify one.

SENATOR FULLER CLARK: Thank you.

(The Chair recognized Sen. Letourneau for a question of Sen. Fuller Clark.)

SENATOR LETOURNEAU: Would you believe, Sen. Clark, that every single one of my children couldn't get a driver's license until they were 18, 'cause I wouldn't let them?

SENATOR FULLER CLARK: I would believe that, Sen. Letourneau, and I would also tell you that I do have a 25-year-old who does not have a driver's license, but he is entitled to get a legal identification non-driver's license, and I believe you can get those from age 16 on.

SENATOR LETOURNEAU: That's correct.

Sen. Gottesman moved the question.

Without objection, the Chair moved to close debate, with two remaining speakers.

(The Chair recognized Sen. Bragdon to speak.)

SENATOR BRAGDON: Thank you, Madam President. I snuck in under the wire there. I think today I am going to vote against this, but I wanted to share a related story, I think, that at least helped me put this in a little bit of context. Monday night the Milford School Board met and we were joined by the state championship "We the People" team. The Milford "We the People" team – it's a constitutional and civics team, Sen. D'Allesandro – for about the sixth time in the last ten years has won the state competition and has gone on to the national competition, and every year they come to the school board to embarrass us with their knowledge of constitutional law and try and trick us. And so this year they were the champions again, having squashed a combined team from Nashua North and South and from John Stark, so my apologies to Senators Foster, Gottesman and Janeway. And I may also note that this is probably the first time that the words "apple," "kumquat" and "squash" have been used in a senate debate. (Laughter) But they came to us, and actually the subject they were discussing was voting rights, and the specific question was relating to this proposal to allow 17-year-olds to vote. And it was very interesting to hear the discussion, both in terms of whether it should be allowed and whether it should be allowed within parties, and what role the State should have in controlling and telling parties what to do. It was a fascinating discussion. There was

disagreement even among the students. Some thought it should stay at 18, there should be a fixed level. Some thought it should be as low as 14. So it was a very interesting discussion. I do think I'll end up voting against this. I don't in any way question the ideas and it's got some great merits to it. I'll probably vote against it, but thought that was an interesting story that went along with it.

(The Chair recognized Sen. Foster to speak.)

SENATOR FOSTER: Thank you, Madam President. Before I speak to the bill, there's a bill that, it's true, it's in the House, where it would raise the age for adult criminal liability from 17 to 18. It's actually in the Finance Committee. I've no idea whether we're going to get it. They're still working on it over there, and I certainly have no idea if we do get it, what the Senate Judiciary Committee would do with it, which is the committee that would get it. I'm almost positive I voted against a similar measure in the past. So whether or not this body even has to deal with that, who knows. And beyond that, if we tried to decide what bills we're going to be voting on in favor or against, and trying to figure out what those folks are doing over there, this job would be really complicated, and I think it really already is really complicated, at least for me. You know, a driver's license, as somebody mentioned, the lack of a driver's license is why you have this bill before you. My daughter, who was mentioned before, is on the Legislative Youth Advisory Council, and actually is still just 16, I think Sen. Burling wasn't sure in his remarks, and doesn't have a driver's license yet, which makes me happy, not so much her happy. But as the result of that, I was driving her back from a Legislative Youth Advisory Council meeting and, you know, I said, "What did you talk about today?" And this proposal came up, and they were considering it, and it was before our filing deadline, and I reflected on it and I thought it was a really good idea. And, you know, when I filed it, I wasn't thinking about the presidential primary particularly, we're all sort of still sort of wrapped up in that here, but really more about how most of our elections happen, which is a primary in September and a general election in November. And as I was, you know, sort of envisioning what would happen if this bill were to become law, most of our schools start up in, you know, late August or the first week of September, and the school principal could, over the loudspeaker say: Those of you who are going to be 18 by November, whatever the date would be for that particular year, you know, you all can vote in the primary that's coming up in ten days to two weeks, and here's how you register. And for me, this is about increasing participation.

And Sen. Kelly spoke at the hearing on this bill, and she's the Senate appointee to the Legislative Youth Advisory Council, and made a point that I hadn't reflected on. But for many people the first time they vote, it's kind of intimidating; they're not sure how it's all going to work. And these young people are still, by and large, at home, still in the schools and can sort of talk about it with their teachers, with their family, and once they start voting the first time, we know they're going to continue. But if you lose them and they go off into the world, either in the working world, outside of their families, you may not get them back ever, or at least not for a really long time. And that's my motivation for this. It's bringing young people into the process early on and enhancing our democracy. The more people participate, the better. You know, some people say it'll favor one party or another. Yeah, it will, in one election or the other, maybe. But we know these things go in cycles, and the more people we have in the process, the better it is for all of us. So that's my

motivation for bringing this bill forward. I hope you'll support it. I think it's a good initiative. There's been some questions raised, should it apply to municipal elections or not. You know, perhaps that can be discussed over in the House, but for today this is something that I think works for all of us. Thank you, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on SB 436.

A roll call was requested by Sen. Barnes, seconded by Sen. Burling.

The following Senators voted Yes: Gallus, Reynolds, Sgambati, Burling, Cilley, Janeway, Odell, Kelly, Gottesman, Foster, Larsen, DeVries, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.

The following Senators voted No: Kenney, Roberge, Bragdon, Gatsas, Barnes, Letourneau.

Yeas: 17 - Nays: 6

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 492, relative to persons designated to fill vacancies on the ballot. Election Law and Internal Affairs Committee. Ought to Pass, Vote 3-0. Senator Cilley for the committee.

SENATOR CILLEY: Thank you, Madam President. I move that Senate Bill 492 ought to pass. This bill requires that a person designated by a party to fill a vacancy who has already filed for an incompatible office withdraw the prior filing. Drawing from personal experience, the current statute in question needs to be corrected and clarified in order to ensure the best possible filing system for political office. I can speak to this bill personally, having gotten caught up in the snafu of very confusing language and the stress and the frustration of having to go through a rather intimidating process for the first time in my life, and fortunately, having an honorable colleague who was absolutely brilliant in representing me during that, during that time. The Ballot Law Commission was virtually unanimous in its interpretation, or almost lack thereof, of their ability to understand the intent of the Legislature, because there were confusing and conflicting passages in that particular statute. So this is an attempt to clear that up, to make it very simple and very straightforward so that those types of things will not affect others in the future. And I would certainly not like to see anybody have to go through the experience that I did. So if you would join me and the Election Law and Internal Affairs Committee in asking that you support this legislation, I would greatly appreciate it. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on SB 492.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

RESOLUTION

Sen. Foster moved that the Senate adjourn from the Early Session, that the business of the Late Session be in order at the present time, that all bills and resolutions ordered to third reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

Motion to adjourn adopted.

Adjournment from Early Session.

LATE SESSION**Third Reading and Final Passage**

SB 300-FN-A, relative to death benefits for corrections officers killed in the line of duty.

SB 316-FN, expanding a death benefit for police officers and firefighters to emergency medical technicians.

SB 349, allowing continuation of judicial retirement plan benefits for judges called to full-time active military duty.

SB 385, requiring pharmacies to report an inability to fill prescriptions.

SB 404, allowing dental school graduates to practice in an approved dental residency program.

SB 422, adding an energy section to zoning and planning master plans.

SB 423, relative to cashing of bingo winnings checks.

SB 436, enabling certain persons to vote in primaries prior to turning 18 years of age.

SB 492, relative to persons designated to fill vacancies on the ballot.

SB 497-FN, relative to the security of bonds or notes issued to the New Hampshire Municipal Bond Bank.

SB 520-FN-A, requiring the state veterans council to issue a state veterans handbook biennially and making an appropriation therefor.

ANNOUNCEMENTS

PRESIDENT LARSEN (Rule 44): I just want to take this moment to acknowledge the passing of a man who made enormous contributions to the City of Concord and the State of New Hampshire. As you may have all seen, Malcolm McLane died last Saturday. He had a long distinguished career in public service. He served 20 years on the Concord City Council, and as our city's mayor from 1970 to '76. He ran for Governor in 1972, and served on the Governor's Executive Council from 1977 to 1982. His service extends even to our nation. Malcolm was an Air Force officer during World War II and shot down over Luxemburg. He spent almost five months as a Prisoner of War. He came home, graduated from Dartmouth and Harvard Law School. And with his wife, Susan, whose district I now represent, raised a wonderful family. Together, they leave an incredible legacy for the City of Concord and the State of New Hampshire. Their love for skiing, the arts, music, the great outdoors and numerous political causes led them to leadership positions on a variety of boards and agencies. Their influence will be felt in this community, and I'm sure statewide, for generations to come. I worked with Malcolm and Susan as we raised money for the Capitol Center for the Arts here in town. I considered them both friends and role models. And, as you may remember, it was Malcolm who swore me in and was here with us just a year ago as we changed leadership. So I, together with so many of you, mourn his passing, and offer our deepest condolences to his daughters, his grandchildren, nieces and nephews, as well as his colleagues at Orr & Reno. We're honored to have had Malcolm among us and we will miss him dearly.

(The Chair recognized Sen. Barnes.)

SENATOR BARNES: Yes, Madam President, are your wonderful comments in the record? If they're not, I'd like them to be into the record.

PRESIDENT LARSEN: We will add them into the record, thank you.

SENATOR BARNES: Thank you.

PRESIDENT LARSEN: I would also note the passing of another wonderful human being and resident of Concord, Bert Teague, who also served in the House. I didn't know him as well, but certainly he played a wonderful role in many decisions that were made in this building, and we mourn his passing as well.

(The Chair recognized Sen. Janeway.)

SENATOR JANEWAY (RULE 44): Thank you, Madam President. I just want to add a few words to your perfect summary of Malcolm. Malcolm was one of the first – when we came here 30 years ago, Malcolm was one of the first people that we met, because he was representing the seller in the purchase of our homestead in Webster, and thus began a relationship that developed many threads over the past 30 years, personal, nonprofit, just friends, and it was, it was wonderful. His life story clearly marks him as one of the members of the greatest generation. You mentioned his, I think, 73 or something, a great number of missions. When he was released from prison he weighed 90 pounds. And he was 19 when he became a pilot, and this is just, just extraordinary. He was a Rhodes Scholar. I'm not sure whether you mentioned that. And a skier, a skier almost throughout his life from being captain of the Dartmouth Ski Team on through, ultimately later being one of the founders of Wildcat, involved with the Olympics and the ski teams and the museum. And he was clearly active at all levels, as a board member, as a supporter, as a fundraiser. Malcolm visited us on many occasions, and I have to say, never went away empty-handed. He was extremely effective, and the causes were always good ones. So, I think what to me is most remarkable, given the incredible accomplishments and abilities, was his modesty. He wouldn't say, "I'm a Rhodes Scholar," or I'm this or I'm that. He was just modest. And to me, I thought that was great. I think his love and his caring for Susan in her last five years was exceptional, particularly when you consider the point from which he began. When she was here in the Senate, Malcolm was still one who expected supper to be on the table when he got home from work. So he made a 180-degree turn and provided the care and the supper and the love for Susan in her final years. So we can all change and change for the better. So he was an inspiration to me, and I think to many others. Thank you.

(The Chair recognized Sen. Burling to speak.)

SENATOR BURLING (RULE 44): I want to add my thoughts as well. Malcolm was a lawyer who was eager to share his warmth and congratulations and welcome to young lawyers who started in New Hampshire, and he offered me that in the early '70s when I first wandered in here and completed the New Hampshire Bar. He was also, later, kind enough to nominate me for a judgeship, which I'm pleased to say, the other members of the Council and the Governor, Governor Thomson, didn't think I was suited for.

I do want to say just a word about the other man you've mentioned. I knew Bert Teague in the House of Representatives. He was a tall, willowy "tiger" of a politician. And I've heard people say that during his career with Styles Bridges, he was the ultimate Republican, but by the time he joined us in the House of Representatives he was the ultimate New Hampshire citizen. He was focused so clearly on what he perceived to be in the best interest of his state and his community, it was hard not to be carried along by his every argument. Most of all, he had a sense of humor and a sparkle in his eye. And as my colleague has mentioned

Malcolm's military career, I cannot pass the opportunity just to mention that for Bert, being a captain and then a major in the Third Army under General Patton, he had both the incredible rigor of Patton's march through France and the low countries and Germany; he was also the man who accepted the surrender of the German Navy on the Rhine, the Rhone, and the Black Sea. Now, if you can imagine a tall, skinny major standing next to the Rhine River, accepting the surrender of the German Navy, you get a sense of the man. I look at these pictures on the wall behind you, Madam President, and I think of both Bert and Malcolm, and I just know that if Barry Faulkner there, in the third panel, had a chance to continue painting around the room, we would find Malcolm and Bert in there someplace.

(The Chair recognized Sen. D'Allesandro.)

SENATOR D'ALLESANDRO (RULE 44): Thank you, Madam President. I had the privilege of serving with Malcolm McLane on the Executive Council, and I can attest to the fact that he could cook, because we had breakfast at this house many times, and Malcolm really could cook pretty decent eggs. He was a true public servant, and his war record, I think, is one that we should really focus on. He was a Prisoner of War. He was shot down Prisoner of War, and came back, Rhodes Scholar; distinguished lawyer with the ...with the law firm of Orr & Reno. A good example of great public service, great civic engagement. Very bright, very capable human being. And I think got a lot from Dudley Orr and Bob Reno who were, again, two distinguished Americans who founded that firm.

Bert Teague became a friend of mine many, many, many years ago. Bert Teague – Bert Teague was UNH all the way; he bled blue and white. He loved the University of New Hampshire, graduate of the University of New Hampshire. Came over to the University when I was kid playing football and I got to know him. At hockey games, at football games, Bert was there right up until the end. But let me tell you one of the saddest moments in Bert Teague's life, and I think it's something we all ought to remember because it changed his life. Bert Teague ran for the Congress of the United States, and Bert Teague was a Roman Catholic. And in the churches, in the protestant churches, they said that if Bert Teague got elected, that the Pope would run the second Senate ... the second Congressional District. That was a terrible thing that Bert Teague withstood. He withstood that. And I think the lesson of that is that he remained civically engaged and gave all he could to his state and to his country. That's a – that's a great, great lesson. You know, we've gotten way beyond that, but I think it's just an indication of what some people had to go through running for public office, you know, seeking public office; had to lay it all out on the line. And, you know, Bert Teague did that. Bert Teague became Director of the Small Business Administration, retired from that office, and was truly a distinguished, as I said, a distinguished public servant.

So when we think about these, these people, and the lives they led, I think it's good for us to reflect on the trials and tribulations that they went through and they remained part of the process. It was tough, it was difficult on their families, but they remained part of the process. And we're all the beneficiaries of that, and I think that's important for us to recognize. Thank you, Madam President.

(The Chair recognized Sen. Barnes to speak.)

SENATOR BARNES (RULE 44): Thank you, Madam President. I rise to thank you for composing the letter that is sitting out here to the Secretary of Veterans' Affairs, asking all of our members to sign onto it. And I've

heard through the rumor mill that you're also putting one together for our four Congressional delegates, as well as G.W. Bush, our President, on the POW/MIA deal, which perhaps we'll have next week to sign, and I want to let you know that I appreciate it.

PRESIDENT LARSEN: Thank you. And I was going to announce there are two, in fact, items which you can sign on to – actually three, I believe, in the Senate Clerk's Office. Certainly, the issue of the restoring the Veterans Administration Hospital to New Hampshire is out there to be signed, and I hope you all being here today, sign that as you leave. There is the opportunity to sign on as a co-sponsor on the Coos County tax credit bill and the bill relating to creating a health-first policy which will expand healthcare options, health insurance options in our state. I believe all three sign-up sheets are in the Senate Clerk's Office. So as you leave, take that opportunity.

RESOLUTION

Sen. Foster moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, referring bills to committee, scheduling hearings, sending and receiving messages, and processing enrolled bill reports and amendments.

Motion to recess adopted.

The Senate is in recess to the Call of the Chair.

INTRODUCTION OF SENATE BILL(S)

Sen. Foster offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Senate Clerk, Senate legislation numbered from **CACR 34**, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

Resolution adopted.

First and Second Reading and Referral

CACR 34, relating to funding of public education. Providing that the general court shall define an adequate education and distribute state funds for public education in a manner that alleviates local disparities. (Sen. Foster, Dist 13; Sen. Gatsas, Dist 16; Sen. Burling, Dist 5; Sen. Fuller Clark, Dist 24; Sen. Barnes, Dist 17; Sen. Roberge, Dist 9; Sen. Odell, Dist 8; Sen. Gottesman, Dist 12; Sen. Hassan, Dist 23; Sen. Larsen, Dist 15; Sen. D'Allesandro, Dist 20; Sen. DeVries, Dist 18; Judiciary)

Out of Recess.

LATE SESSION

Sen. Foster moved that the Senate adjourn from the Late Session.

Motion to adjourn adopted.

Adjournment from the Late Session.

February 14, 2008

The Senate reconvened at 10:00 a.m., a quorum being present.

The Reverend Edward J. Arsenault of the Diocese of Manchester, guest chaplain to the Senate, offered the following remarks and prayer:

Thank you, Madam President, Senators. It's an honor to be here today and to pray with you. I hope you see in this prayer, the prayer of the people of New Hampshire who I believe pray for your important work every day. Let us pray:

Gracious God, we gather in a spirit of Thanksgiving for the many gifts that You bestow upon us, most especially the gift of human freedom, which is celebrated each day in this chamber when these women and men gather. Inspire the Senate in the State of New Hampshire today with the gifts of the Holy Spirit. May all that they do be begun by You, and by You be happily brought to fulfillment this day. Amen

Sen. Burling led the Pledge of Allegiance.

INTRODUCTION OF GUESTS AND PRESENTATIONS

Gilford High School Girls' Volleyball Team and coaches: 2007 Div. II State Volleyball Champions, 6th in the nation as all-time consecutive state championship winners.

Maureen Beauregard: Leadership New Hampshire Program, Families in Transition Program.

Senate Page: Maj. Richard Gould, Pinkerton Academy.

Senate Page: Lt. Jacob Pelletier, Pinkerton Academy.

PRESIDENT LARSEN: I would also like to take a moment to offer our condolences to Katrina Swett, her husband, former U.S. Ambassador Richard Swett, and all of the Lantos family. As you know, Katrina's father died earlier this week, Tom Lantos. He is often mentioned as a Holocaust survivor, the only Holocaust survivor to serve in Congress. But he didn't just survive the Holocaust; he fought in the resistance against the Nazis in Hungary. He came to the U.S. after the war and became a professor of economics with his Ph.D. at Berkeley. In 1980 he was elected to Congress and re-elected 13 times. He was a champion of civil liberties. He founded the Congressional Human Rights Caucus and supported human rights struggles in the regimes in China, Russia, Myanmar and Darfur and other nations. He served his decades in Congress with wisdom and dignity, and his efforts have had a profound impact on furthering the cause of human rights, equality and justice. The people of California have lost a great leader, and the Lantos family has lost a beloved husband, father and grandfather. We offer our deepest sympathies to that family today.

COMMITTEE REPORTS

SPECIAL ORDER

President Larsen moved, without objection, the Commerce section of the Calendar and the addendum be Special-Ordered to after Election Law.

SB 340-FN-A-L, requiring a transportation stipend for charter school pupils. Education Committee. Inexpedient to Legislate, Vote 5-0. Senator Estabrook for the committee.

SENATOR ESTABROOK: Thank you, Madam President. I move SB 340-FN as inexpedient to legislate. This legislation sought to require the State to pay \$400 per pupil, transportation costs for charter school pupils, although transportation is not required to be provided. The Joint Committee on Costing an Adequate Education has recommended funding for transportation within universal costs for all schools, including charter schools. It would be a conflict to have both of these bills

moving forward at the same time. Therefore, the Education Committee recommends that SB 340 be voted ITL, and asks your support. Thank you, Madam President.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on SB 340-FN-A-L.

Motion of Inexpedient to Legislate adopted.

SB 355-FN, relative to room and board scholarships for children of firefighters and police officers killed in the line of duty. Education Committee. Ought to Pass, Vote 4-1. Senator Foster for the committee.

SENATOR FOSTER: Thank you, Madam President. I move Senate Bill 355-FN ought to pass. The provisions of this legislation deal with a statute that was enacted but has never been put into practice. Currently the statute requires the Office of the Treasurer to create Chancellor Scholar Fund, the sole purpose of which is to seek and accept private donations to be credited to a trust fund to provide room and board scholarships for the children of fallen police officers and firefighters. This legislation would remove this statutory requirement from the books and make the University System make a contribution of \$2,500 per year for books, supplies and books, and put the statute into line what is required for surviving children of veterans killed in the line of duty. The Education Committee supports this policy and asks for your support. Thank you very much.

(The Chair recognized Sen. D'Allesandro to speak.)

SENATOR D'ALLESANDRO: Thank you, Madam President. I rise in support of Senate Bill 355 and want my colleagues to recognize the fact that the dollars will come out of the University System appropriation. There will not be any further State dollars required. It'll come out of their appropriation, and as a result the bill will not have to go to Finance. There was a great deal of confusion as to how this money was going to be given to a student as a result of previous legislation that was passed. This clarifies the situation. It says quite clearly that the University System will be responsible for this. It'll come out of their financial aid program. It'll be part of the financial aid package that's given to the student. And it's a good thing. It's something that we all wanted. This is the right mechanism to perform it. Thank you, Madam President.

Recess/Out of recess.

The question is on the adoption of the committee recommendation of Ought to Pass on SB 355-FN.

A roll call was requested by Sen. Kenney, seconded by Sen. Barnes.

The following Senators voted Yes: Gallus, Reynolds, Kenney, Sgambati, Burling, Cilley, Janeway, Odell, Roberge, Kelly, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, DeVries, Letourneau, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.

The following Senators voted No: Bragdon.

Yeas: 23 - Nays: 1

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 418, changing the name of charter schools to "innovative public schools." Education Committee. Ought to Pass with Amendment, Vote 5-0. Senator Fuller Clark for the committee.

Sen. Fuller Clark, Dist. 24
February 7, 2008
2008-0442s
04/01

Amendment to SB 418

Amend the title of the bill by replacing it with the following:

AN ACT replacing references to “charter school” with “chartered public school”.

Amend the bill by replacing all after the enacting clause with the following:

1 Reference Changes. Amend the following RSA provisions by deleting “charter school” or “charter schools” and replacing them with “chartered public school” or “chartered public schools” as appropriate: RSA 5-B:2, III; RSA 31:105; RSA 31:106; RSA 91-A:1-a, I(d); RSA 186:13, XI(c); RSA 189:1-d, IV; RSA 189:13-a; RSA 189:28, I-II; RSA 189:28, V; RSA 194:23, II; RSA 194:60, III; the chapter heading in RSA 194-B; RSA 194-B:1, II-V; the section heading in RSA 194-B:2; RSA 194-B:2, II-III; RSA 194-B:2, VI-IX; the section heading in RSA 194-B:3; I-X; RSA 194-B:3, XII-XIII; the section heading in RSA 194-B:3-a; RSA 194-B:3-a, I-II; RSA 194-B:3-a, IV-V; the section heading in RSA 194-B:4; RSA 194-B:4, II-III; RSA 194-B:4, V; the section heading in RSA 194-B:5; RSA 194-B:5; the section heading in RSA 194-B:6; RSA 194-B:6, the section heading in RSA 194-B:7; RSA 194-B:7; the section heading in RSA 194-B:8; RSA 194-B:8; RSA 194-B:9, I-IV; the section heading in RSA 194-B:10; RSA 194-B:10; RSA 194-B:11; the section heading in RSA 194-B:13; RSA 194-B:13, I-III; the section heading in RSA 194-B:14; RSA 194-B:14; the section heading in RSA 194-B:15; RSA 194-B:15, I; RSA 194-B:15, III; RSA 194-B:16, I; RSA 194-B:16, IV; RSA 194-B:16, VI-VII; RSA 194-B:17, I-III; RSA 194-B:17, VII-VIII; RSA 195:31; RSA 195-A:16; RSA 198:42, IV; RSA 198:45; RSA 507:17, I; RSA 507-B:1, I; and RSA 507-B:4, IV.

2 Special Education; Advisory Committee. Amend RSA 186-C:3-b, II(n) to read as follows:

(n) One representative of a [~~public charter~~] **chartered public** school, appointed by the governor.

3 Charter and Open Enrollment Schools; Pupil Selection. Amend the section heading in RSA 194-B:9 to read as follows:

194-B:9 [~~Charter~~] **Chartered Public Schools** and Open Enrollment Schools; Pupil Selection; Enrollment; Separation.

4 Charter and Open Enrollment Schools; Funding. Amend the section heading in RSA 194-B:11 to read as follows:

194-B:11 [~~Charter~~] **Chartered Public Schools** and Open Enrollment Schools; Funding.

5 Applicability. A charter school which was approved prior to the effective date of this act may, by a majority vote of its board of trustees, implement a name change in accordance with this act. Written notice of the name change shall be submitted to the state board of education and the department of education within 10 days of its approval.

6 Effective Date. This act shall take effect 60 days after its passage.

2008-0442s

AMENDED ANALYSIS

This bill replaces all references in statute to “charter school” with “chartered public school.”

SENATOR FULLER CLARK: Thank you very much, Madam President. I move Senate Bill 418 ought to pass with amendment. Senate Bill 418 deals with the public misconception that charter schools are not public schools. The legislation with the proposed amendment will clarify everywhere in the statute that these are "chartered public schools." New Hampshire has the pleasure of being home to some excellent charter schools, schools which are providing alternative learning experiences for many students. The renaming of "chartered schools" to "chartered public schools" will help to better inform the public about this excellent educational choice available. The Education Committee recommends that SB 418 be adopted as amended and asks for your support.

The question is on the adoption of Committee Amendment 0442s. Committee Amendment 0442s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 418.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 459, establishing an advanced manufacturing education advisory council. Education Committee. Ought to Pass with Amendment, Vote 5-0. Senator Kelly for the committee.

**Senate Education
February 7, 2008
2008-0459s
04/10**

Amendment to SB 459

Amend the bill by replacing section 2 with the following:

2 Effective Date. This act shall take effect upon its passage.

SENATOR KELLY: Thank you, Madam President. I move Senate Bill 459 ought to pass with amendment. Senate Bill 459 will establish an Advanced Manufacturing Education Advisory Council. The Department of Education testified that over the past years there have been concerns articulated from both parents and teachers that our students are not well informed on advanced manufacturing job opportunities. The focus of this council will be to provide a more coordinated effort statewide and address the needs of our students for careers in advanced manufacturing. The Department will staff this council as well as facilitate the meetings, provide the minutes and other administrative duties at no additional costs. It is important to fully understand and educate today's and tomorrow's students in worldwide manufacturing such as computer-augmented technology. The Education Committee recommends that SB 459 be adopted as amended and I ask for your support. Thank you.

The question is on the adoption of Committee Amendment 0459s. Committee Amendment 0459s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 459.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 437, relative to access to voter database information. Election Law and Internal Affairs Committee. Ought to Pass with Amendment, Vote 4-1. Senator Burling for the committee.

Sen. Burling, Dist. 5
January 29, 2008
2008-0295s
03/01

Amendment to SB 437

Amend the bill by replacing all after the enacting clause with the following:

1 Access to Voter Information. Amend RSA 654:46 to read as follows:
 654:46 [Party] Access to Voter Information.

I. Notwithstanding any other provision of law, the secretary of state shall, upon request, provide to a *political* party, as defined in RSA [652:11] **664:2, IV, or to a political committee, as defined in RSA 664:2, III**, a list of the name, street address, mailing address, town or city, ~~[gender, year of birth,]~~ voter history, and party affiliation, if any, of every registered voter in the state. ***The secretary of state shall, upon request, provide to a candidate for state office a list of the name, street address, mailing address, town or city, voter history, and party affiliation, if any, of every registered voter in the candidate's district.*** In this section, "voter history" means ~~[the elections at which the voter voted]~~ ***whether the person voted in the most recent election.*** The secretary of state may charge a fee of up to \$25 plus \$0.50 per thousand names or portion thereof in excess of 2,500 plus shipping charges for each copy of the list provided under this section. The secretary of state may provide lists as prescribed in this section on paper, computer disk, computer tape, electronic transfer, or any other form. Fees collected by the secretary of state under this section shall be deposited in the election fund established pursuant to RSA 5:6-d.

II. No *political* party, *political committee*, or *candidate* shall use or permit the use of voter information provided by the secretary of state under paragraph I for commercial purposes as defined in RSA 654:31, I(b). Whoever knowingly violates any of the provisions of this section shall be guilty of a misdemeanor if a natural person or guilty of a felony if any other person.

2 Effective Date. This act shall take effect upon its passage.

2008-0295s

AMENDED ANALYSIS

This bill:

I. Permits political committees and political organizations which nominate candidates to receive voter information lists from the secretary of state.

II. Permits candidates for state office to receive voter information from the secretary of state for their districts.

III. Eliminates the requirement that the secretary of state provide the gender and year of birth of voters to information recipients and limits the required voter history to the most recent election.

SENATOR BURLING: Thank you, Madam President. Madam President, I move Senate Bill 437 ought to pass with amendment. And may I vary my course a little bit, Madam President. I'd like to speak to the amendment and to the bill in a format other than just my usual remarks.

PRESIDENT LARSEN: You may speak to the bill in whatever way you choose.

SENATOR BURLING: Thank you, Madam President. Last year we passed a bill which opened the door to a political committee access to the voter

files. Those are files kept by the Secretary of State's Office, largely containing the information which local election officials gather across the state and throughout the state. The argument in favor of passing the bill last year was a very simple one, it was the notion that as candidates in New Hampshire run for office they need to be able to get their message to the people who pass judgment on them as candidates, i.e., the voters. That information is available and collected by the State of New Hampshire. The original bill spoke to the two majority parties having access to that information. Subsequent to passage of that bill, the Libertarian Party brought suit against the Secretary of State challenging the section which defined "party" as "any political organization that gets more than 4 percent of the vote at the next preceding election." Separate statute, but nonetheless the issue was preferring majority parties over minority parties. This fall the Superior Court struck that section down as unconstitutional. It's unconstitutional in the opinion of the Court because it violates the "equality provision that speaks to the equal right to be elected." That's part of our Constitution. Each citizen has an equal right to be elected. This bill is not an effort, it is the way to make access to the voter file constitutional. And if I may, I'll just describe briefly what the bill does.

First and foremost, it says that any political party defined as an organization which nominates a candidate for political office, the different section that defines "political party." Any political party can have access to the voter file, and "any political committee," as defined in RSA 664:2, III. Now, what am I talking about there? I'm talking about political organizations like the League of Women Voters, the Forest Society, and the NRA. Organizations that want to get their message out to voters can have access to the voter file to be used for political purposes. The statute also says, and this is the most important part in my view, that candidates can have access to the information in the voter file for their own district. So here the 24 of us are, if we want to run for election, we'll have access to the voter file for the district that we seek election in; 5 for me, you know, go around the room, think of your own district. What are we getting when we get this information? We're getting information that's already in the public domain. It's all information which is kept by the clerks of our local communities. The difference here is the information is in one place. It is kept in a format that's usable, and it's accessible, and as far as we're concerned, inexpensive to have it. The statute says that a candidate may have access to that information. The information which is provided for under this bill – and I want to call your attention to this 'cause it's very important – is restricted to the "name, street address, mailing address, town or city, voter history and party affiliation." Deleted from this list of information are "gender" and "year of birth." Those pieces of information, while some may wish to have access to them, are private concepts which we feel should not be included in this list of access. The bill then goes on to say, "Voter history" is defined as "voter participation in the next prior election." It's not going to be a long list of 20 years of voting conduct by the individual voter, but you will be able to gather from the voter file whether or not the person voted in the prior election. The bill then concludes with a section that reaffirms that "No political party, political committee, or candidate may use this information for any commercial purpose," only for political purpose. This is how we establish the communication, the colloquy, if you will, between candidate and voter. There's no question at all but what this statute is constitutional. It provides for limited and appropriate access to very important information, and I urge your support for passage of this bill, ought to pass as amended. Thank you, Madam President.

(The Chair recognized Sen. Gatsas for a question of Sen. Burling.)

SENATOR GATSAS: Thank you, Senator. I understand that a candidate is a candidate, and that candidate usually becomes a candidate when he signs up in June. We are also candidates once we file a new PAC, as some of us have. But let's assume somebody's looking to run against me and doesn't have a PAC filed; does that entitle him to receive this information? 'Cause he's truly not a candidate until he signs up.

SENATOR BURLING: Thank you for the question, Senator. You've actually raised a point that I didn't actually address. My assumption had always been that candidacy is a declaration of the mind and heart, that when somebody decides to run for office, certainly when they announce that they're running for office, they're a candidate. And at that point, they would have access to this information. I have not defined further the beginning and end of the candidate's status. I'm satisfied that it's difficult enough to actually get your courage together to say, "Yeah, I'm running for the state Senate." That that is a sufficient – the moment one says "I'm running for office" ought to be the starting point for this access.

SENATOR GATSAS: Follow-up. So if somebody just walks into the Secretary of State's Office and says, "I want a copy of the list because I'm a candidate," you believe that the Secretary of State's going to release that information to him?

SENATOR BURLING: I believe if somebody declares that they are running for office and goes to the Secretary of State and says, "I'm a candidate for the office of ... I'm running against Burling for Senate District 5," that that should be a sufficient meeting of the task. Again, it is clear that that material, that information cannot be used for any commercial or nonpolitical purpose. A person, for instance, who is saying, "I want to run for Burling's seat" might want to do a mailing to figure out whether they had any support. They might want to send out an initial flier to say, "I'm really interested in this, please let me know if you're with me." I think those are essential parts of the back-and-forth of electoral struggle.

SENATOR GATSAS: Thank you.

**The question is on the adoption of Committee Amendment 0295s.
Committee Amendment 0295s adopted.**

SENATOR BRAGDON: Thank you, Madam President. I was going to phrase this as a question to Sen. Burling, but it was going to be so long that I figured I would just make it a statement and if he cares to respond, it would probably be helpful. I'm a little concerned about this, the claim that it makes it constitutional. It might make it more constitutional, but I still think there's a problem. It says that a voter list can go to a "political committee," and I wasn't sure if the RSA's had changed, so I pulled up the book and I don't think they have. A "political committee" is defined as "an organization of two or more persons to influence elections or ballot measures." And the problem I see is that if an individual person decides that they, by themselves, want to lobby against, either a candidate or I'm thinking more specifically a measure, they're not entitled to the voter list; yet the political parties are. And if fact, if the measure on the ballot were something regarding third parties or independent voters, then the political parties would have access to all the information on all the voters in the state, but little "John Smith" who wants to run his own little one-man attack against this or for this, is denied that. So

I still think there's a huge constitutional issue here in that the political parties get access, the individual person who wants to make a difference has no access. Therefore, I'm against this.

(The Chair recognized Sen. Gatsas for a question of Sen. Bragdon.)

SENATOR GATSAS: Senator, I just heard testimony from Sen. Burling that said that if I merely went in and in my mind I thought I was going to be a candidate against Sen. Bragdon, I could ask for a list and they'd have to give it to me.

SENATOR BRAGDON: Yes, that was if you're a candidate in your mind. But if I am not a candidate, but I don't like this particular ballot measure, I can't get it.

SENATOR GATSAS: Well, if you produce in your mind that you're going to be a candidate, I guess they've got to give it to ya.

SENATOR BRAGDON: If I lie and say I'm a candidate, yes, I suppose.

(The Chair recognized Sen. Burling to speak.)

SENATOR BURLING: Thank you, Madam President. I'll simply respond to the "almost question" that my colleague raised a minute ago. I do think it's important to keep in mind the relativities here. The information we're talking about is information that's already in the public domain. There isn't a single piece of this information that is not already accessible on a town-by-town, municipality-by-municipality basis. If a single person wanted to gain access to statewide information, the test is, can you find somebody else who's interested in the issue you're describing to call yourself a political committee. The alternative is you go town by town, or you go to a political party and say, "Will you give me access to the list. I want to send out a mailer on the subject of ..." you name the subject. I think what we're trying to do is not shave this down so fine that we can no longer really see it, but do the balancing test of privacy rights to public access rights in a way that allows us to have meaningful access to important information so that we, as volunteer legislators can run for office, put our points and positions out there to the voting public and do so in an effective and appropriate way. I can see the technical concern, but I will tell you, in my heart-of-hearts, I believe we have resolved all the constitutional issues here and that there is no set of circumstances under which this doesn't resolve the problem that was raised by Judge Conboy in the prior statutory framework.

(The Chair recognized Sen. Bragdon to speak.)

SENATOR BRAGDON: Thank you, Madam President. I just want to point out to people there's a big difference between an individual and a political committee. A political committee, when it runs an ad or sends out a mailing, has to identify who the political committee is and who the members of that political committee are. An individual does not have to do that. And if somebody wanted to be against something and protect their own privacy or perhaps whatever repercussions, they no longer have this option under this, they have to be part of a political committee.

The question is on the adoption of Ought to Pass as Amended on SB 437.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

Sen. Bragdon is in opposition to SB 437.

SB 478, relative to processing absentee ballots. Election Law and Internal Affairs Committee. Ought to Pass, Vote 3-0. Senator Gallus for the committee.

SENATOR GALLUS: Thank you very much, Madam President. I move that SB 478 ought to pass. This bill permits moderators to authorize the opening of absentee ballot return envelopes on Election Day prior to the time established for processing absentee ballots. This will allow election officials to save valuable time while continuing to protect the integrity of the ballots. The Election Law and Internal Affairs Committee asks that you support Senate Bill 478, and we thank you.

The question is on the adoption of committee recommendation of Ought to Pass on SB 478.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

INTRODUCTION OF GUEST

Sen. Gottesman introduced Governor Jeanne Shaheen as a guest in attendance.

COMMITTEE REPORTS, RESUMED

SB 319-FN, relative to third party liability and state recovery of public assistance. Commerce, Labor and Consumer Protection Committee. Ought to Pass, Vote 6-0. Senator DeVries for the committee.

SENATOR DEVRIES: Thank you, Madam President. I move Senate Bill 319 ought to pass. This bill clarifies the definition of health carrier for purposes of third-party liability. The bill also permits an individual, referred to as a "relator," to bring an action against a third-party for making a false claim for payment of public assistance. The proposed changes to the third-party liability statute are required by the Federal Deficit Reduction Act of 2005. These changes are necessary to clarify a health carrier's obligation to accept and respond to the State's right to recover payment from a financially responsible health carrier when Medicaid has made payment for medical services to an eligible individual. Once New Hampshire statute conforms to the 2005 DRA, the State will be eligible to receive an additional 10 percent of Medicaid dollars collected in cases brought under the Medicaid Fraud and False Claims Act. This bill is a request of the Department of Health and Human Services and is also supported by the Attorney General's Office. Please join the members of the Commerce, Labor and Consumer Protection Committee in voting Senate Bill 319 ought to pass. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on SB 319-FN.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 345, prohibiting hospitals from requiring insurance coverage for organ donations and organ transplants. Commerce, Labor and Consumer Protection Committee. Inexpedient to Legislate, Vote 6-0. Senator Cilley for the committee.

SENATOR CILLEY: Thank you, Madam President. I move that Senate Bill 345 is inexpedient to legislate. This bill prohibits hospitals from requiring insurance coverage for organ donations and organ transplants. The intent of this legislation is both laudable and heartfelt. The Committee heard compelling testimony in support of this legislation from the parents of a young New Hampshire man who lost his life while

awaiting a liver transplant in a Massachusetts hospital. This heartbroken family will forever be left with a sense of anger and despair due in part to their belief that their son was not placed on an organ donation list because he lacked health insurance. I empathize with these parents deeply, both as a mother and as a lawmaker, hopeful that no parent will ever again have another such story to tell. Unfortunately, this legislation is a solution in search of a problem. The Committee heard testimony from a representative from the Dartmouth Hitchcock Hospital. The *only* hospital, I might add, in New Hampshire where transplants are performed, who stated that the hospital never considers a lack of insurance coverage as a barrier to organ transplant surgery. If a patient does not have insurance coverage, hospital affiliates work with the patient and family to ensure that a lifesaving operation is never denied because a patient cannot pay. Additional testimony from the New Hampshire Hospital Association affirmed this position. Moreover, the Committee received written testimony from the New England Organ Bank which stated that a patient's degree of insurance coverage is never used as a criterion in determining who is placed on a list for organ donation. Committee members believe that this legislation could potentially save lives in a state where the problem does exist. For New Hampshire citizens, thankfully, this legislation is unnecessary. Please join the members of Commerce, Labor and Consumer Protection Committee in supporting our unanimous motion of inexpedient to legislate on Senate Bill 345. Thank you.

(The Chair recognized Sen. Kenney to speak.)

SENATOR KENNEY: Thank you, Madam President. Senate Bill 345, I'm going to reserve most of my comments to Senate Bill 427, which is on a similar topic, but I do want to point out a few things. It is true that New Hampshire does not have a liver transplant center hospital here in New Hampshire. And that is something that forces our New Hampshire families who need liver transplants to move down to other hospitals in Massachusetts, Connecticut, Florida. And if you are in need of a liver transplant in the State of New Hampshire, you're basically walking a death sentence. One of my constituents, another constituent two years ago from Tamworth, Mr. Charles Ricker, had to move to Florida in order to get his liver transplant. It was there that he received it at Jacksonville, Florida Mayo Clinic from a gentleman who was deceased who was 76 years old. He had to move out of New Hampshire to get it. And most families – and all families have to move out of New Hampshire to get a liver transplant. I believe that this country needs to address the insurance aspect of organ transplantation. And it's something that, while the State of New Hampshire and the Legislature might argue that we do a good job here in New Hampshire with the Dartmouth Medical Hitchcock Hospital, because they only do three other types of transplants, but still, we're sending New Hampshire families into a very situation – a serious situation into other states, and we need to know that they have the appropriate insurance and the appropriate information.

I would lastly just add that the gentleman that, who was the impetus for me bringing this legislation forward was Nicholas Courier who ended up in Massachusetts at a transplant center hospital, and because of the lack of expediency with the insurance coverage, he died soon after. And the parents today do not know if he was put on the transplantation list right away, if he would have lived or at least had the opportunity to live, and that is a sad, sad situation that they have to live with every day of their lives. Any one of us could be confronted with the need for a liver,

or a relative or a constituent. And there was a state Senator in this body right here who's in a situation where he needs a liver. It's a former state Senator in my district, and he suffers every day not knowing if he'll be able to get a liver. There are over 16,000 people in this country today that need a liver and not everybody's going to get one. So it's a very serious situation. And though this bill might be a little bit too taxing at this point, it's an issue that the federal level and also at one point in the future the State of New Hampshire really has to address. But, Madam President, because of time I'm going to reserve most of my comments to Senate Bill 427. Thank you.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on SB 345.

Motion of Inexpedient to Legislate adopted.

SB 397, relative to mail-in rebates for merchandise purchased within the state. Commerce, Labor and Consumer Protection Committee. Inexpedient to Legislate, Vote 6-0. Senator Reynolds for the committee.

SENATOR REYNOLDS: Thank you, Madam President. I move that Senate Bill 397 is inexpedient to legislate. This bill requires merchants to immediately honor all mail-in rebates at the time of the sale. Although members of the community and the Committee certainly emphasize, and empathize with the feelings of frustration relative to rebate realization expressed by the prime sponsor, we believe that this well-intended legislation would result in costly unintended consequences. Please join members of the Commerce, Labor and Consumer Protection Committee in voting Senate Bill 397 inexpedient to legislate. Thank you, Madam President.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on SB 397.

Motion of Inexpedient to Legislate adopted.

SB 432, relative to workers' compensation for employee leasing companies. Commerce, Labor and Consumer Protection Committee. Inexpedient to Legislate, Vote 6-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Madam President. I move Senate Bill 432 inexpedient to legislate. This bill allows employee leasing companies to have more than one workers' compensation carrier as long as such company only has one carrier per client company. The committee heard testimony from the Department of Labor and several insurance providers stating that it would be problematic, particularly with regard to fraud detection, for a company to have more than one insurance carrier. The Commerce, Labor and Consumer Protection Committee asks for your support on the motion of inexpedient to legislate on Senate Bill 432. Thank you.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on SB 432.

Motion of Inexpedient to Legislate adopted.

SB 481, relative to the bond requirement for completion of local and state public works projects. Commerce, Labor and Consumer Protection Committee. Inexpedient to Legislate, Vote 6-0. Senator DeVries for the committee.

SENATOR DEVRIES: Thank you, Madam President. I move Senate Bill 481 inexpedient to legislate. This bill sought to increase the bonding

threshold on state and local public works projects from 25,000 to 100,000. The legislation was introduced on behalf of the Town of Lancaster. Although Committee members believe Lancaster to be a financially responsible town that could benefit from the legislation, we remain uncomfortable with raising the threshold statewide. The funds available in a security bond have proven necessary to fulfill contractor obligations and increasing their liability to 100,000 seemed excessive. The Commerce, Labor and Consumer Protection Committee asks your support for the motion of inexpedient to legislate. Thank you.

(The Chair recognized Sen. Gallus to speak.)

SENATOR GALLUS: Thank you, Madam President. I ask that you vote against the ITL and pass this legislation. I introduced the bill on behalf of the Town of Lancaster. Current bond limits, as you've heard, are \$25,000. It's far too low. This figure was set in the 1980's. And, as we all know, this is a very small— a very small project certainly will run that cost. Costs have escalated tremendously since that time. As we've heard from DOT, some costs have escalated 45 to 50 percent. The bill, as I put it in, would set the limit at a hundred thousand dollars or more. The towns and cities have many other protection mechanisms for these small projects. This particular bill would give our towns and cities substantial savings on bonding of smaller projects. The bill would certainly be good for each and every one of our communities — although none of them showed up in favor of a particular community at the hearing — it is beneficial to each and every community, and I'm sure they just weren't aware of, you know, this cost. Twenty-five thousand dollars, right now, is probably a patch in the road. Thank you, Madam President.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on SB 481.

Motion of Inexpedient to Legislate adopted.

A division vote was requested after the vote had been taken on the question.

PRESIDENT LARSEN: I pronounced the bill inexpedient to legislate, and the — I believe I indicated the vote by voice, and so we will not have a division on this bill.

Sen. Letourneau is in opposition to the motion of Inexpedient to Legislate on SB 481.

HB 267, relative to certain small loans. Commerce, Labor and Consumer Protection Committee. Ought to Pass with Amendment, Vote 4-2. Senator Gottesman for the committee.

Sen. Gottesman, Dist. 12

February 4, 2008

2008-0390s

08/09

Amendment to HB 267

Amend the bill by replacing section 4 with the following:

4 Effective Date. This act shall take effect January 1, 2009.

SENATOR GOTTESMAN: Thank you, Madam President. I move House Bill 267 ought to pass with amendment. This bill establishes a 36 percent upper limit on the amount of interest that may be charged on certain small loans. The bill was amended in committee to extend the effective date from 60 days from passage to January 1, 2009. As a result of outside

input, committee members felt that extending the effective date was necessary to afford borrowers sufficient time to close out existing loans and to allow existing lenders to adjust their business model to comply with the law. The Committee heard nearly five hours of testimony on both House Bill 267 and Senate Bill 472, which you are about to hear. There was an additional effort spent by some to attend many hours this summer in the Legislative Office Building listening to House hearings and work sessions on House Bill 267. During our lengthy hearing, committee members heard extensive testimony. Having sat through these many hours of testimony, I believe it's important to understand who came to speak. The Committee heard testimony in opposition to the bill almost exclusively from industry representatives and employees. In contrast, those in support of the legislation are some of the state's most respected public servants and advocates charged with protecting New Hampshire's most vulnerable consumers. This includes our own Attorney General, the state Department of Banking, the AARP, the welfare administrators from all around the state. Welfare officers – specifically from Portsmouth, Keene, Merrimack, Nashua and Manchester – all testified in support, saying they had direct experience with people who were coming to them for help when they were unable to get out from under mounting debts brought on by payday and car title loans. In essence, we, the taxpayers, end up subsidizing the payday loan industry when our people get caught in a debt trap and can't pay their rent, food or electric bills. Efforts to regulate this industry in the ways suggested by the industry have been tried elsewhere, but they have not been successful. That is why we are seeking this interest rate limit.

All of our neighboring states have enacted similar interest rate caps to prevent payday lenders from preying on their citizens and charging exorbitant fees. Those states that have implemented such interest rate limits have succeeded in saving their citizens millions of dollars in interest, in loan interest or fees. Without a return to responsible regulation, these lenders will continue to collect fees from borrowers totaling more than \$5 million per year in New Hampshire alone. The evidence shows that those most likely to get caught in the debt trap are those living on fixed incomes and vulnerable families feeling the national economic squeeze. The money that feeds the payday loan industry and their investors is money that could be going to pay for medicines, food and mortgage payments here in New Hampshire. Be aware, this is an industry where the typical borrower pays back \$793 on a \$325 loan after getting mired in five or more loan transactions. Industry interests have lobbied hard to convince the members of the New Hampshire Senate to allow this type of lending at exorbitant interest rates because there's a lot of money involved. Money the industry borrows at a few points over prime is being loaned out at 250-400 percent. It's not particularly a good deal for our most vulnerable citizens who get caught in the downward spiral of debt. I hope you will join members of the Commerce, Labor and Consumer Protection Committee in voting House Bill 267 to pass as amended. Thank you.

(The Chair recognized Sen. Barnes for a question of Sen. Gottesman.)

SENATOR BARNES: Thank you, Madam President. Sen. Gottesman, I sat in the hearing where those five welfare people from the five different cities and towns came in, along with you, and I asked a question, if you remember: What is it costing your cities and towns? What is this payday loan situation costing? And four of them had no idea, and one of them threw a number out to us. I think it was the lady from Keene that had a number, for a two-month number. And they were going to get

that information back to the Committee. And as a committee member, I never got that information. Somehow, did it get misplaced? Did you ever get that from those five people?

SENATOR GOTTESMAN: No, Sen. Barnes, I was not provided with the information any further. But I do recall the testimony at the hearing that the gentleman from Nashua said they just lost, I think, last month alone, they suffered a loss of, I think it was \$2400. I believe the lady from Keene, whose name escapes me at the moment, testified that in the review of all of the folks who come in looking for welfare in her community, about 40 percent of them had in their debt portfolio payday or car title loans. And she was extremely concerned as she had to resolve those with them and steer them in the right direction to try to get out from under.

SENATOR BARNES: Thank you very much, Senator.

SENATOR GOTTESMAN: Thank you for the question.

(The Chair recognized Sen. Janeway to speak.)

SENATOR JANEWAY: Thank you, Madam President. The proponents tell us that this industry provides an important service for its customers. Those opposed describe it as a dreadful trap for the unwary. Actually, both are right. However, when a service causes at least as much harm as it does good, and I think this one actually causes more harm than good, there's clearly no benefit. And if one of the things that we should be guided by here is "do no harm," we should support this bill. Thank you.

**The question is on the adoption of Committee Amendment 0390s.
Committee Amendment 0390s adopted.**

(The Chair recognized Sen. Gatsas to speak.)

SENATOR GATSAS: Thank you, Madam President. I think it's very important that we talk facts and not talk hearsay. I have an article here from *Business Week*, December 7th, 2007, "A Second Look at Payday Loans." "Payday lenders get a bad rap for charging exorbitant rates on short-term loans. But according to Donald Morgan at the Federal Reserve Bank of New York, they mean better lifelines for cash-strapped consumers than other options. He studied households in Georgia and North Carolina, states that banned payday lenders in 2004 and 2005, respectively. Since then consumers in those states are bouncing more checks, lodging more complaints about debt collectors, and filing for bankruptcy more frequently. In Atlanta, the Federal Reserve reported an additional 1.2 million bounced checks. Payday advances may not be ideal," the author argues, "but the alternatives are worse. Without that option, consumers may be resorting to bank's overdraft protection or loans from pawnshops which usually charge higher interest, or even worse, they just don't pay their bills." That's a fact.

Let's talk about another fact. City of Manchester: largest welfare department in the State of New Hampshire, a fact that comes from the Welfare Commissioner himself. Over the last four years: 2004, total payments: 540,000; 2005, 516,000; 2006, 437,000; 2007, 410,000. Ironically, the amount of payday lending loans has increased in that same timeframe. There is no question that they beat the alternative. Let's understand what's transpired in the last few years. You used to have seven days for the clearance of your check. And we all can remember that we probably sent a check out and said: Boy, I really hope – I really hope this doesn't clear before payday. Well, that seven-day period has been narrowed to

three. Or was narrowed to three; it's now immediate. So people don't have the flexibility that they used to, hoping that the check that they sent out and paid a bill on Friday, that if the funds came in by Monday, they'd have 'em available. You go into Wal-Mart now and you pay 'em by check and it clears right there on the spot. That's a fact.

Let's talk about another fact. Another fact. I'm sure most everybody in here has an ATM card. Nobody's talking about those fees. I haven't heard the Banking Commissioner come out and say: Oh, my goodness, those fees are exorbitant. Somebody goes downstairs, takes a hundred dollar ATM machine and gets their money, *their* money; not somebody else's, they haven't borrowed it, it's their own. They've worked hard, they've saved it; it's in their bank. They get charged a \$2.00 ATM charge from the machine. Not only that, but their bank charges them a dollar seventy-five. That's \$3.75 on *their* money. Now, I ask you a simple question: What's the annual percentage rate on that? 'Cause that's the way we have to calculate things. Anybody have a guess? How 'bout if I told you it was 1365 percent on *your* money. And the scary thing is, is most people don't get a hundred dollars out of an ATM machine; they only take twenty. So multiply the 1365 percent times five; you're at 6500 percent to get *your* money out of an ATM machine. I would say that's even bigger usury than we're talking about these companies. They're not predators. The ATM machine that's downstairs is a predator. *Your* money. That's a fact.

I bring forward an amendment that talks about what we should be doing. The fact is: 200 people will be out of work in January. Fact is: Storefronts will be closed, and the people that own those buildings will be out of tenants in January. Fifty-six million dollars will leave this economy in an economy that's very, very, very tight right now. Another fact: Most payday lenders used to hold people's checks if they couldn't pay. That's a fact. They'd come in and said: The check's not going to be good, what do I do? Until the Banking Department told 'em they must deposit that check, which created – which created a bounced check, so an additional fee to those people that can least afford it. And oh, by the way, the fact is, three years ago, the Banking Department came in with no opposition. And I don't know what made that 180-degree turn. 'Cause we all understand one thing: I don't know what Senators have gotten complaints from these people that are spiraling out of control. Because spiraling out of control, when you ask the predator lenders how many people have you prosecuted for nonpayment? I haven't seen one person that came in and complained that they were forced to go to court in small claims for \$300, 'cause it doesn't behoove them to chase the money down, it's too expensive.

So what are we really doing here? We're taking an industry that we, 24 people, believe is bad. They made a hundred fifty thousand dollar – a hundred and fifty thousand loans. Credit unions going to take 'em? I don't think that the credit unions can turn it around in two or three hours. 'Cause most people, when they need the money, they need the money. They can't wait a day. They can't wait to see if somebody's going to lend it to 'em, because they're under the gun. Some people, unfortunately, live that way. And there's no question that it's a very difficult thing to look at, maybe from us looking out. But on a Tuesday when somebody's waiting on a check that doesn't get there until Friday and somebody needs to buy baby formula, it's important that they have an opportunity to do that for their child. When somebody's car is broken down and they've got to get to work, it's important that we find a way that that person can get to work. I live in the biggest community in the state. I consider myself pretty accessible to all the people in Manchester. Being an alder-

man, you're even a little closer to the constituents in a ward. I've not gotten one call from one person in New Hampshire, or in Manchester, that said: You know what, I've gotten hurt by a payday loan. This \$300 loan has put me and my family into bankruptcy. Nobody's told me yet what happens if you don't pay the loan. Why would you go get another loan if you didn't have the money to pay the first one? 'Cause we're an upstanding citizen? Or just because you wanted to pay somebody some interest and get another loan.

The amendment that you have before you – and I'll pass it out now, 'cause obviously we're talking about an amendment and I certainly want everybody have an opportunity. If you haven't had the opportunity, it's the same amendment that Sen. Barnes tried to submit to the Committee, but didn't have an opportunity. It takes also the bill that has the study committee on it, 'cause certainly we're going to study this, but we're going to study it and have it reported out November 14th, but put these people out of business January 1st. I don't know why we have a study committee to have the State spend \$1500 when we're in a financial crisis now. Can we – can we pass this Amendment out? It's Amendment – and I'd like to speak to it now, Madam President – it's Amendment 0601s.

Sen. Gatsas offered a floor amendment.

Sen. Gatsas, Dist. 16

February 14, 2008

2008-0601s

08/04

Floor Amendment to HB 267

Amend the title of the bill by replacing it with the following:

AN ACT relative to payday and title loans and establishing a commission to study access to consumer credit for people in New Hampshire.

Amend the bill by replacing all after the enacting clause with the following:

1 Findings. The general court recognizes that:

I. Access to consumer credit can provide people with a means by which to navigate gaps in income, establish long-term financial stability, and build household wealth.

II. Certain irresponsible or abusive lending practices and loan products can increase consumers' financial distress, rather than decrease it.

III. Some people may lack access to responsible consumer credit.

IV. Access to responsible consumer credit for people benefits not only individual households, but also local and state economic health.

2 Lender; Definition. Amend RSA 399-A:1, VIII to read as follows:

VIII. "Lender" means individuals, corporations, associations, firms, partnerships, limited liability companies, and joint stock companies or other forms of organizations that lend money or give credit temporarily on condition that the amount borrowed be returned, usually with an interest fee. "Lender" shall not include a financial institution. ***"Lender" shall include a person who for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly:***

(a) Acts as an intermediary, finder, or agent of a lender or borrower for the purpose of negotiating, arranging, finding, or procuring loans, or commitments for loans.

(b) Offers to serve as agent for any person in an attempt to obtain a loan.

(c) Offers to serve as agent for any person who has money to lend for a loan.

(d) Performs services or any of the business functions auxiliary or supplemental to the production, distribution or maintenance of loans for a lender.

3 Payday Loan; Definition. Amend RSA 399-A:1, X to read as follows:

X. "Payday loan" means a ~~[small-dollar,]~~ short-maturity, secured or unsecured loan, other than a title loan~~[-where the lender contracts for, exacts or receives, directly or indirectly, or where the borrower pays for, directly or indirectly, in connection with any such loan, any charges which in the aggregate are greater than 50 percent per annum].~~

4 Small Loan; Definition. Amend RSA 399-A:1, XIV to read as follows:

XIV. "Small loan" means a closed-end loan in the amount of \$10,000 or less or an open-end loan with a line of credit of \$10,000 or less, and where the lender contracts for, exacts or receives, directly or indirectly, ***or where the borrower pays for, directly or indirectly*** in connection with any such loan any charges, whether for interest, ***examination, commission, compensation, service, brokerage, endorsement fees, other fees,*** consideration, expense or otherwise, which in the aggregate are greater than 10 percent per annum ***except for the lawful fees, if any, actually and necessarily paid out by the lender to any public officer, for filing or recording in any public office any instrument securing such loan and except for the reasonable costs, charges, and expenses, including court costs actually incurred in connection with a repossession of the security or an actual sale of the security.***

5 License Required. Amend RSA 399-A:2, IV to read as follows:

IV. Any person not exempt under paragraph III, and the several members, officers, directors, agents and employees thereof, who shall willfully violate or participate in the violation of any provisions of paragraph I shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person. If in the making or collection of a loan the ~~[licensee]~~ ***person*** violates paragraph I of this section, the loan contract shall be void and the lender shall have no right to collect, receive, or retain any principal, interest, or charges whatsoever.

6 New Paragraph; License Required. Amend RSA 399-A:2 by inserting after paragraph IV the following new paragraph:

V. The provisions of this chapter shall apply to any person who seeks to evade its application by any device, subterfuge, or pretense, including, without limitation:

- (a) Calling a loan by any other name;
- (b) Using any agents, affiliates, or subsidiaries in an attempt to avoid the application of the provisions of this chapter; or
- (c) Having any affiliation or other business arrangement with an entity that is exempt from the provisions of this chapter, the effect of which is to evade the provisions of this chapter, including, without limitation, making a loan, while purporting to be the agent of such an exempt entity where the purported agent holds, acquires, or maintains a preponderant economic interest in the revenues generated by the loan.

7 No Refinancing of Payday Loans. Amend RSA 399-A:11, X to read as follows:

X. If a borrower desires to renew an existing closed-end loan~~[-payday loan,]~~ or title loan for the purpose of obtaining additional cash a new contract shall be drawn up in its entirety and such prior loan shall be

paid in full from such proceeds of the new loan. ***Payday loans shall not be rolled over, renewed, or refinanced.*** All legal papers in connection with such prior loan shall be stamped "PAID IN FULL" and returned to such borrower.

8 New Section; Provisions Applicable to Payday Loan Lenders and Title Loan Lenders; Extended Payment Plans. Amend RSA 399-A by inserting after section 12 the following new section:

399-A:12-a Provisions Applicable to Payday Loan Lenders and Title Loan Lenders. The following provisions shall be applicable to payday loan lenders and title loan lenders licensed under this chapter:

I.(a) The department shall establish a consumer credit counseling education fund, to be funded through assessments on payday loan lenders and title loan lenders, for the purposes of providing consumer finance education. Moneys in the fund shall be nonlapsing and continually appropriated to the department. Funding shall be used for educational purposes only by the department and may be made available to New Hampshire based consumer credit counseling agencies in the form of grants. Payday loan lenders and title loan lenders shall be prohibited from including such assessments in the charges allowed under this chapter. The department shall adopt rules, in accordance with RSA 541-A, for the establishment, funding, and administration of the consumer credit counseling education fund.

(b) Payday loan lenders and title loan lenders shall provide information to borrowers about the consumer credit counseling education fund established in this section in the lenders written loan agreements.

II. Payday loan lenders and title loan lenders shall offer an extended payment plan to borrowers as follows:

(a) If a borrower, on the business day immediately preceding the date a payday loan or title loan is due, returns to the lender's place of business where the loan was consummated, requests an extended payment plan (EPP), and signs an amendment to the parties' written agreement, then the lender shall enter into an EPP with the borrower. The EPP shall allow the borrower, for no additional finance charge, to pay the remaining balance of the payday loan or title loan within 60 days past the due date in 4 substantially equal installments.

(b) The borrower may request an EPP in connection with any payday loan or title loan, provided that the borrower may request only one EPP from any single lender during any 12-month period. During the period that a borrower has an EPP outstanding and for 15 days following the date the borrower fully pays an EPP, a lender shall not make a new payday loan or title loan to the borrower.

(c) A lender making a payday loan or title loan shall provide the borrower, in the parties' written agreement, the following written notice in at least 8-point bold type immediately above the borrower's signature: "EXTENDED PAYMENT PLAN NOTICE. State law gives you the right to an extended payment plan (EPP), as described in this notice. If you – on the business day immediately preceding the date this payday loan or title loan is due – return to the lender's place of business where this loan was consummated, request an EPP, and sign an amendment to this agreement, then the lender must enter into an EPP with you. The EPP must allow you, for no additional finance charge, to pay the remaining balance of this loan in 4 substantially equal installments within the next 60 days, following the amendment execution date. You may request an EPP in connection with any payday loan or title loan, provided that you

may request only one EPP from any single lender during any 12-month period. During the period that you have an EPP outstanding and for 15 days following the date that you fully pay an EPP, a lender may not make a new payday loan or title loan to you."

9 Provisions Applicable to Payday Loan Lenders. RSA 399-A:13 is repealed and reenacted to read as follows:

399-A:13 Provisions Applicable to Payday Loan Lenders. -

I. Each lender shall conspicuously post in its licensed location a schedule of interest charges, with examples using a \$300 loan payable in 14 days and 30 days. Payday loans shall incur interest only. No other charges or fees shall apply to or be collected on payday loans.

II. Each payday loan shall be evidenced by a written loan agreement, which shall be signed by the borrower and a person authorized by the lender to sign such agreements and dated the same day the loan is made and disbursed. The loan agreement shall set forth, at a minimum:

(a) The principal amount of the loan.

(b) The interest charged.

(c) The annual percentage rate, which shall be stated using that term, applicable to the transaction calculated in accordance with Federal Reserve Board Regulation Z.

(d) Evidence of receipt from the borrower of a check or other account debit authorization, dated the same date, as security for the loan, stating the amount of the check, if a check or other account debit authorization was given by the borrower.

(e) An agreement by the lender not to present the check or other account debit authorization for payment or deposit until a specified maturity date, which date shall be at least 7 days and not more than 30 days after the date the loan is made and after which date interest shall not accrue at a greater rate than 6 percent per year, if a check or other account debit authorization was given by the borrower.

(f) Evidence of receipt from the borrower of a check, or other account debit authorization, dated the same date, as security for the loan, stating the amount of the check, if a check or other account debit authorization was given by the borrower.

(g) An agreement by the lender not to present the check or other account debit authorization for payment or deposit until a specified maturity date, which date shall be at least 7 days and not more than 30 days after the date the loan is made, if a check or other account debit authorization was given by the borrower.

(h) An agreement by the lender that the borrower shall have the right to cancel the loan transaction at any time before the close of business of the next business day following the date of the transaction by paying to the lender, in the form of cash or other funds instrument, the amount advanced to the borrower.

(i) An agreement that the borrower shall have the right to prepay the loan in full or in part prior to maturity by paying the lender the principal amount advanced and any accrued and unpaid interest.

III. The lender shall give a duplicate original of the loan agreement to the borrower at the time of the transaction.

IV. A lender shall not obtain any agreement from the borrower:

(a) Giving the lender or any third person power of attorney or authority to confess judgment for the borrower;

(b) Authorizing the lender or any third party to bring suit against the borrower in a court outside the state or to require a borrower to accept an arbitration forum outside the state; or

(c) Waiving any right the borrower has under this chapter.

V. A lender shall not require, or accept, more than one check from the borrower as security for any loan at any one time.

VI. A lender shall not cause any person to be obligated to the lender and any affiliate of the lender in any capacity at any time in the principal amount of more than \$500.

VII. A lender shall not refinance, renew, rollover, or extend any loan. A payday loan shall not be refinanced and shall not be paid off with the proceeds of another payday loan pursuant to RSA 399-A:11, X.

VIII. A lender shall not cause a borrower to be obligated to the lender or an affiliate of the lender upon more than one loan at any time for the purpose of increasing charges payable by the borrower.

IX. A lender shall not require or accept a post-dated check as security for, or in payment of, a loan.

X. A lender shall not threaten, or cause to be instigated, criminal proceedings against a borrower if a check given as security for a loan is dishonored.

XI. A lender shall not take an interest in any property other than a check payable to the lender or an authorization to debit a borrower's account as security for a loan.

XII. A lender shall not make a loan to a borrower to enable the borrower to pay for any other product or service sold at the lender's business location.

XIII. Loan proceeds shall be disbursed in cash or by the lender's business check. No fee shall be charged by the lender or an affiliated check cashier for cashing a loan proceeds check.

XIV. A check given as security for a loan shall not be endorsed to a third party.

XV. Upon receipt of a check given as security for a loan, the lender shall stamp the check with an endorsement stating "This check is being negotiated as part of a payday loan pursuant to RSA 399-A, and any holder of this check takes it subject to all claims and defenses of the maker."

XVI. Before entering into a payday loan, the lender shall provide each borrower with a pamphlet, in form consistent with regulations promulgated by the commissioner, explaining in plain language the rights and responsibilities of the borrower and providing a toll-free number in the banking department for assistance with complaints.

XVII. Before disbursing funds pursuant to a payday loan, a lender shall provide a clear and conspicuous printed notice to the borrower indicating that a payday loan is not intended to meet long-term financial needs and that the borrower should use a payday loan only to meet short-term cash needs.

XVIII. A borrower shall be permitted to make partial payments, in increments of not less than \$50 on the loan at any time prior to maturity without charge. The lender shall give the borrower signed, dated receipts for each payment made, which shall state the balance due on the loan.

XIX. A lender shall not prosecute a borrower or cause a borrower to be prosecuted if a check or Automated Clearing House (ACH) authorization given as security for a loan is dishonored.

XX. A lender and any affiliate of the lender shall not make a payday loan to a person who has previously borrowed from the lender or affiliate until the next business day after the prior loan has been paid off and in no case less than 12 hours from the time of payoff. The lender is responsible to document both the payoff date and the new loan date, if any, in a manner that compliance with this section can be verified by the commissioner. If the time between the payoff and the new loan

is less than one full business day, the lender shall record the date and hour of the payoff and the date and hour of the new loan in a manner that compliance with this section can be verified by the commissioner. This cooling-off period shall be calculated from the date and time of the payoff by the borrower of a payday loan to the date and time that the borrower executes a new loan contract or is obligated under another payday loan, whichever is earlier.

XXI. A new loan contract form shall be completed by the borrower and a new loan contract shall be entered into and executed by the borrower and the lender for each loan; no pre-authorization or master loan agreement shall be used by the lender.

XXII. The interest rate for a payday loan shall not exceed the rate that results from the calculation of \$12.50 per \$100 borrowed.

XXIII. A lender shall not make a payday loan to a borrower if the total principal amount of the loan and interest rate exceeds 25 percent of the consumer's gross monthly income.

XXIV. For the purpose of this section, a "consecutive payday loan" means a payday loan that a lender makes to a borrower within 14 calendar days following the date that the borrower fully paid a previous payday loan made by the same lender to the same borrower. If a borrower obtains 5 consecutive payday loans from a lender then the lender shall not make a new payday loan to the borrower until at least 30 calendar days have elapsed following the date that the borrower fully paid the fifth consecutive payday loan.

XXV. A lender shall not execute a new payday loan agreement if a borrower currently has a payday loan outstanding with another lender. The lender shall verify, in accordance with RSA 399-A:13-a, that a new payday loan agreement complies with this section.

XXVI. Upon the execution of a new payday loan agreement, the lender may impose an additional administrative fee of not more than \$.50 per agreement as necessary to cover the cost to the lender of verification pursuant to RSA 399-A:13-a.

XXVII. No payday lender shall present the check or other account debit authorization for payment or deposit at the specified maturity date if a borrower has requested an extended payment plan pursuant to RSA 399-A:12-a, II.

10 New Section; Payday Loan Verification. Amend RSA 399-A by inserting after section 13 the following new section:

399-A:13-a Payday Loan Verification.

I. Before entering into a payday loan agreement with a borrower, a licensee shall use a commercially reasonable method of verification to verify that the proposed loan agreement is permissible under this chapter.

II. No later than January 1, 2009, the department shall certify that one or more consumer reporting service databases are commercially reasonable methods of verification. The list of consumer reporting services that the department has certified as providing commercially reasonable methods of verification shall be posted on the department's web site and shall be mailed to each licensee by first class mail at the address of record in the department's licensing files.

III. Each licensee who provides payday loans shall comply with this section no later than January 30, 2009.

IV. A borrower seeking a payday loan may make a direct inquiry to the consumer reporting service to request a more detailed explanation of the basis for a consumer reporting service's determination that the consumer is ineligible for a new payday loan, and the consumer reporting service shall provide a reasonable response to the consumer.

V. The department shall, in cooperation and consultation with licensed payday lenders, adopt rules in accordance with RSA 541-A, to develop and implement a certification process for a commercially reasonable method of verification.

11 New Paragraphs; Provisions Applicable to Title Loan Lenders. Amend RSA 399-A:14 by inserting after paragraph IV the following new paragraphs:

V. Charge any interest or fees other than a daily interest rate not to exceed the equivalent of \$22 per \$100 per 30-day period. A title loan lender may charge reimbursement of the fee paid by the lender to record its lien on the borrower's certificate of title.

VI. Lend more than 50 percent of the value of the motor vehicle.

VII. Make a title loan without receiving from the consumer an executed affidavit which states that:

(a) The customer has provided the licensee with true and correct information concerning the customer's income, obligations, employment, and ownership of the vehicle; and

(b) The customer has the ability to pay the loan.

VIII. Make a loan to a borrower without providing the following notice in a contract, placed conspicuously above the borrower's signature in at least 14 point type, as follows:

"(a) THIS LOAN IS NOT INTENDED TO MEET LONG TERM FINANCIAL NEEDS.

(b) YOU SHOULD USE THIS LOAN ONLY TO MEET SHORT TERM CASH NEEDS.

(c) THIS IS A HIGH INTEREST LOAN. YOU SHOULD GO TO ANOTHER SOURCE IF YOU HAVE THE ABILITY TO BORROW AT A LOWER RATE OF INTEREST.

(d) YOU ARE PLACING YOUR VEHICLE AT RISK IF YOU DEFAULT ON THIS LOAN.

(e) YOU WILL BE REQUIRED TO PAY ADDITIONAL INTEREST IF YOU RENEW THIS LOAN RATHER THAN PAY THE DEBT IN FULL WHEN DUE.

(f) IF YOU BELIEVE THAT THE TITLE LENDER HAS VIOLATED THE PROVISIONS OF RSA 399-A, YOU HAVE THE RIGHT TO FILE A WRITTEN COMPLAINT WITH THE NEW HAMPSHIRE BANKING DEPARTMENT.

(g) WRITTEN COMPLAINTS SHOULD BE SENT TO THE NEW HAMPSHIRE BANKING DEPARTMENT AT 64B OLD SUNCOOK ROAD, CONCORD, NH 03301. YOU MAY ALSO CALL THE NEW HAMPSHIRE BANKING DEPARTMENT AT 1-800-437-5991."

12 Title Loan Renewals. RSA 399-A:15 is repealed and reenacted to read as follows:

I. A title loan shall be for an original term of no more than one month. A title loan lender may allow such loan to be renewed no more than 6 additional periods each equal to the original term, provided however, that at each such renewal the borrower must pay at least 10 percent of the loan's original principal balance, in addition to any finance charge owed, to reduce the principal balance outstanding. If the borrower cannot pay this principal reduction at any renewal, the title loan lender may either: (i) declare the borrower in default, or (ii) allow the loan to be renewed, provided that the lender shall reduce the current principal amount of the loan by 10 percent of the original principal amount for the purposes of calculating interest thereafter. This reduction in principal shall continue to be owed by the borrower, but such amount shall not be entitled to accrue interest thereafter. For the purpose of this section, a renewal is any exten-

sion of a title loan entered into within 14 days from the original contract due date or within 14 days from a subsequent contract renewal due date continuing the loan, for an additional period without any change in the terms of the title loan other than a reduction in principal. Evidence of such renewal shall be by a separate written renewal contract signed and dated by the borrower. No accrued interest shall be capitalized or added to the principal of the loan at the time of any renewal. A lender shall not require a borrower to renew a loan, and renewals may not be written into the loan contract so that they occur automatically.

II. A title loan may not be paid off with the proceeds of another title loan.

III. A lender and any affiliate of the lender shall not make a title loan to a person who has previously borrowed from the lender or affiliate until the next business day after the prior loan has been paid off and in no case less than 12 hours from the time of payoff. The lender is responsible to document both the payoff date and the new loan date, if any, in a manner that compliance with this section can be verified by the commissioner. If the time between the payoff and the new loan is less than one full business day, the lender shall record the date and hour of the payoff and the date and hour of the new loan in a manner that compliance with this section can be verified by the commissioner. This cooling-off period shall be calculated from the date and time of the payoff by the borrower of a title loan to the date and time that the borrower executes a new loan contract or is obligated under another title loan, whichever is earlier.

13 Commission Established. There is established a commission to study access to consumer credit for people in New Hampshire.

14 Membership and Compensation.

I. The members of the commission shall be as follows:

(a) Two members of the senate, appointed by the president of the senate.

(b) Two members of the house of representatives, appointed by the speaker of the house of representatives.

(c) The governor, or designee.

(d) The bank commissioner, or designee.

(e) The attorney general, or designee.

(f) A representative of Consumer Credit Counseling of New Hampshire and Vermont, appointed by that organization.

(g) Two representatives of the New Hampshire Bankers Association, appointed by that organization.

(h) A representative of the New Hampshire Community Loan Fund, appointed by that organization.

(i) Two representatives of the New Hampshire Credit Union League, appointed by that organization.

(j) A representative of the New England Financial Services Association, appointed by that organization.

(k) A representative of New Hampshire Legal Assistance, appointed by that organization.

(l) A representative of the New Hampshire Local Welfare Administrators Association, appointed by that organization.

II. Legislative members of the commission shall receive mileage at the legislative rate when attending to the duties of the commission.

15 Duties. The commission shall examine the following:

I. The varieties of consumer credit currently available to people in New Hampshire;

II. The varieties of non-credit emergency assistance currently available to people in New Hampshire;

III. The impact of irresponsible or abusive lending practices and loan products on people in New Hampshire;

IV. The potential for market-based development of new varieties of responsible consumer credit for people in New Hampshire; and

V. Possible legislation to improve access to responsible consumer credit for people in New Hampshire.

16 Chairperson; Quorum. The members of the study commission shall elect a chairperson from among the members. The first meeting of the commission shall be called by the first-named senate member. The first meeting of the commission shall be held within 45 days of the effective date of this section. Five members of the commission shall constitute a quorum.

17 Report. The commission shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 14, 2008.

18 New Subparagraph; Fund Established. Amend RSA 6:12, I(b) by inserting after subparagraph (268) the following new subparagraph:

(269) Moneys deposited in the consumer credit counseling education fund established in RSA 399-A:12-a, I.

19 Effective Date. This act shall take effect upon its passage.

2008-0601s

AMENDED ANALYSIS

This bill:

I. Establishes an extended payment plan for payday loan and title loan borrowers.

II. Establishes a consumer credit counseling education fund.

III. Prohibits the refinancing of payday loans.

IV. Requires payday loan verification.

V. Redefines "payday loan" "small loan," and "lender."

VI. Establishes a commission to study access to consumer credit for people in New Hampshire.

(The Chair recognized Sen. Gatsas to speak to the floor amendment.)

SENATOR GATSAS: Thank you, Madam President. This amendment, I can tell you, was not ... was not contrived or derived by the industry. As a matter of fact, they weren't even at the table when the changes were made. I think it's important that we look at this amendment because it truly, it truly takes an industry that's there and puts it into perspective on what I think people are talking about of a control factor. One, it reduces the amount on a per hundred dollar basis to \$12.50. Twelve dollars and fifty cents, based on a per hundred dollars, it's a number that, my bet is, the industry right now will tell you, we weren't aware of it, we were looking at 15, but it was amended again to make sure that people had an opportunity to see what was going on: consecutive loans. We say they get into this tailspin. We say that the consumer doesn't understand. He just goes from one to the next. It's very clear that the second loan can't be made within a 14-day period of the first payment. So it's not like you can go get a loan to pay a loan, because in this amendment it also states clearly that there has to be an inter-lender database set up so nobody can receive one loan to pay another loan; you can't have two loans going at the same time. And it also sets

up crediting counseling, an education fund for people, and that has to be told to 'em at the time of the loan and it must be on their contract. Limits on the number of simultaneous multi-lender loans, nobody stops anything from happening.

The House Bill amendment didn't do anything. Here it says not more than one loan at a time. There's a cooling-off period. You can get five consecutive loans in 14 days, but then you must wait 30 days. And you have to have a 14-day space in between each one of those loans. So these are things – and the other thing that it allows is that if you don't have the ability to pay and you're looking for an extension, it gives you 60 days at zero interest with four equal payments to pay off the money that you owed. Not a bad deal. Those predators are giving you 60 days – 60 days at zero interest to pay 'em back their money. I don't know what bank would do that for you. But in that 60-day period, they don't deposit your check. So they're not creating a bank charge. They're not creating a bank bounce-check charge. Right now, that's happening. Those predators were kind enough not to do it until the Banking Commissioner said you've got to deposit that check, which created the bank overdraft charges.

So I offer this amendment in an opportunity that says we in the Senate believe that business is good in the State of New Hampshire. Are there some people that need to be regulated? Sure. But I guess the big question, I ask every one of you to go onto the Internet and Google "payday loans." Yeah, you can regulate the ones – or you can try and regulate the ones that are in New Hampshire. But if they're outside of New Hampshire, you can't regulate them. It doesn't happen. And those people that need money – just like the lady that called me last week and said she needed \$200 to take her dog to the vet, 'cause she didn't have the money or the dog would have died. That same woman called and said, "If I didn't have a payday lender, I couldn't have saved my dog." So I ask every one of you to vote this amendment in. It gives you the ability for a commission so that that commission can be studied and report out November 14th. And the opportunity for legislation, if they truly are "predators," as we've heard, if they truly are predators, then let's bring legislation forward in the next year. And if it's such that the commission comes forward and says they are predators and they don't belong in this great state, then so be it. But let's not close these businesses down and put 200 people out of work just after Christmas. I mean if this legislation is such a bad piece – if these people are so bad, why don't we put 'em out today? Most bills are 60 days after passage. Why don't we do that? Why are we allowing another three or four months to go by? Why are we doing that, I don't understand. If they're bad, let's get rid of 'em. Let's not do it just after Christmas. Thank you, Madam President.

(The Chair recognized Sen. Gottesman for a question of Sen. Gatsas.)

SENATOR GOTTESMAN: I actually have a few, if you'll bear with me. But I'll take them one at a time.

SENATOR GATSAS: Absolutely, Senator.

SENATOR GOTTESMAN: Sen. Gatsas, did you read the work that was prepared by Donald Morgan?

SENATOR GATSAS: Yes, I did.

SENATOR GOTTESMAN: Did you read it from beginning to end?

SENATOR GATSAS: Well, maybe you have a quote in there that I might have missed, Senator, 'cause I'm sure that you probably read it a lot closer, or somebody read it a lot closer.

SENATOR GOTTESMAN: If I may continue?

PRESIDENT LARSEN: You may continue.

SENATOR GOTTESMAN: Sen. Gatsas, are you aware that the ... the Federal Reserve Bank of New York and the Federal Reserve System were not responsible for this study and do not endorse this study?

SENATOR GATSAS: Yes.

SENATOR GOTTESMAN: And you're aware that the ... the opinions stated by Mr. Morgan are solely his own, even though he's an employee of the Federal Reserve Bank of New York; is that correct?

SENATOR GATSAS: Yes, that's correct.

SENATOR GOTTESMAN: Okay.

SENATOR GATSAS: That doesn't make him wrong.

SENATOR GOTTESMAN: Are you aware that the Center for Responsible Lending did a follow-up on that study and did an economic overview of the technical data that's contained in that study?

SENATOR GATSAS: I didn't see the data.

SENATOR GOTTESMAN: And did you read the study from the Center for Responsible Lending that contradicted Mr. Morgan's study?

SENATOR GATSAS: I didn't see the data.

SENATOR GOTTESMAN: Okay.

SENATOR GATSAS: Almost the same way that the Welfare Departments didn't bring in their data.

SENATOR GOTTESMAN: Would you believe that the data was severely criticized by the peers who reviewed the work of Mr. Morgan?

SENATOR GATSAS: Senator, I don't disagree that everybody's got an opinion about this. Mr. Morgan's opinion doesn't have to be wrong because his peers see it some other way.

SENATOR GOTTESMAN: If I may follow up. You made a comment, Senator, that the City of Manchester did not have a problem. But you are aware that Mr. Martineau came to the Committee and indicated that it was a problem, and he is the Welfare Officer for the City of Manchester?

SENATOR GATSAS: Senator, I talked to Commissioner Martineau on Friday, asked him to prepare these numbers, and these are the numbers that he prepared for me. So I'm just telling you that the cost of the welfare for payday loans on a four-year basis is less than what it was the previous year.

SENATOR GOTTESMAN: If I may. You had a complaint about the cost of credit cards and ATM cards. You are aware that those are regulated by federal law, correct?

SENATOR GATSAS: Senator, all I'm telling you is that if we want to call the predators at 300 percent, I would say that people that take *our* money, even if it was a federal law, and you probably would agree with me, that we don't agree with every federal law because they don't send us the 40 percent that we deserve on special education, so those laws sometimes are even broken at the federal level. And I'm saying to you that 16 – 16,500 percent is wrong.

SENATOR GOTTESMAN: If I may. Senator, you indicated that you have heard from no one who had a complaint about payday loans. And I told you that one of your constituents came to the Committee, remember?

SENATOR GATSAS: I don't know if you said it was a constituent, but you said there was somebody there.

SENATOR GOTTESMAN: And I told you there was testimony that this gentleman had 52 renewals on a payday loan, and he came and testified that this destroyed his life and his family's life. And you indicated to me, what were your exact words that you said?

SENATOR GATSAS: I don't know. You must be able to quote 'em for me.

SENATOR GOTTESMAN: You said, "If you show me one person who's hurt by payday lending, I'll vote for this bill." Isn't that what you said?

SENATOR GATSAS: I think I said that, Senator.

SENATOR GOTTESMAN: And this is your constituent.

SENATOR GATSAS: I didn't know he was my constituent. But I can tell you that I've corrected the problem of the 52 consecutive loans in the amendment, so that must mean that you would support this amendment.

SENATOR GOTTESMAN: One more question.

PRESIDENT LARSEN: Final question.

SENATOR GOTTESMAN: Now, on behalf of Sen. Barnes, you made a comment about Sen. Barnes' committee amendment not being ... I don't know what exactly you said, but the impression was it wasn't accepted. Sen. Barnes made a motion that wasn't seconded in committee. Are you aware of that?

SENATOR GATSAS: I think that's what I said, Senator. Those were my exact words. He brought forward – and usually senatorial courtesy is to allow somebody's amendment to come forward for discussion.

SENATOR GOTTESMAN: And one last question.

PRESIDENT LARSEN: Do you yield?

SENATOR GATSAS: I have no problem, Madam President.

PRESIDENT LARSEN: Proceed.

SENATOR GOTTESMAN: You indicated that this commission was something that would solve the problem before the deadline of the law going into place. You are aware of what the purpose of the commission established is going to be, are you not?

SENATOR GATSAS: I read the amendment, Senator. And what it says is they're to report out November 14th.

SENATOR GOTTESMAN: And you're aware that this is an attempt to bring in all aspects of our financial institutions and committees and representatives and members of government to try to address a problem to see if we can further encourage people to get into the business of loaning money to people who President Clinton and Arnold Schwarzenegger wrote about last week and called the "unbanked." Are you aware of that?

SENATOR GATSAS: There's no question that the "unbanked" are very important people, but those "unbanked" on January 1st of 2009, are really totally "unbanked" because there's no place for them to go, and your commission is not going to be able to get legislation before anybody until the following year.

SENATOR GOTTESMAN: Thank you. And thank you for yielding.

SENATOR GATSAS: Not a problem, Senator.

(The Chair recognized Sen. Barnes for a question of Sen. Gottesman.)

SENATOR BARNES: You've got a great memory, Senator, and I appreciated that over the years that I've got to know you. You mentioned that a constituent of Sen. Gatsas came into the Committee and talked about how his life was ruined. I thought I sat in on the entire committee hearing, and I might have gone to the bathroom sometime, but I don't remember hearing a gentleman come in and say his life was ruined. Where did that happen?

SENATOR GOTTESMAN: He was a gentleman who came from Africa, and he – I want to say he was from ... his name was Alexander Nwinkina, and I was wrong, I said 52 times, he said he rolled over his loan "56 times until his family was out on the street." And this comes from the record, so perhaps you were out for a moment.

SENATOR BARNES: Thank you, Madam President. That happened during our committee hearing?

SENATOR GOTTESMAN: Yes, it did.

SENATOR BARNES: Well, by golly, I missed it.

SENATOR GOTTESMAN: And it's in the official record.

SENATOR BARNES: Thank you for bringing it to my attention.

SENATOR GOTTESMAN: Thank you.

The question is on the adoption of Floor Amendment 0601s.

A roll call was requested by Sen. Gatsas, seconded by Sen. Barnes.

The following Senators voted Yes: Gallus, Kenney, Cilley, Odell, Bragdon, Clegg, Gatsas, Barnes, Letourneau, Downing.

The following Senators voted No: Reynolds, Sgambati, Burling, Janeway, Roberge, Kelly, Gottesman, Larsen, DeVries, D'Allesandro, Estabrook, Hassan, Fuller Clark.

Yeas: 10 - Nays: 13

Floor Amendment 0601s failed.

Sen. Foster asserted Rule 42 on HB 267.

(The Chair recognized Sen. Bragdon to speak.)

SENATOR BRAGDON: Thank you, Madam President. Frankly, as of probably noontime yesterday, I was relatively ambivalent with this. I heard somebody say that there was heavy-duty lobbying going on. I can honestly say nobody's contacted me. I think I had a letter from a client of a payday firm that looked like it had been encouraged by the firm itself. But other than that, I haven't heard a thing. And then Tuesday, I guess, I was out trying to peddle some ads for my newspaper and thinking part of the reason I was semi-ambivalent 'cause I didn't think there were any of these in my district, and so no one from my district had really contacted me, there weren't any in my district, so I was kind of thinking back and forth, pros and cons. Lo and behold, there right in front of me is a payday loan company in my tranquil, peaceful District 11. So, I said that's interesting, we have a vote coming up on Thursday; maybe I'll stop in and see what goes on. So I had a little chat with them. They

had a nice little office. Not as nice, I might say, as banks and insurance companies have. So if the payday loan companies are doing this terrible thing by borrowing money and getting more money back from it, it appears to me that there are other industries that are doing quite a bit more of this. But I had a nice little chat with the lady behind the counter who kind of explained how the system works and I got a little more comfortable with it, and I had a chance to talk to a customer. And the particular situation for this customer was as follows, and I can relate to this. Having started a business, you incur a lot of demands on your cash flow. You may or may not have any credit to secure a loan from a bank. And so you're very cognizant of: Okay, how am I going to get by this week, where's the cash going to come from? I have a large outstanding balance on some of my credit cards, to which I'm not happy paying the high interest rate. This person had just transferred, or at least recently transferred money from a high interest credit card to a zero percent interest credit card. Several thousand dollars of credit card interests transferred from a card that was charging 18 percent, to one that was charging zero. Great deal. You read the fine print on those offers and that zero percent holds for a year, two years, as long as every single payment is made on time. If you are one day late with one payment, the zero percent goes away. It's 30 percent, plus prime, or something like that. Somewhere between 30 and 40 percent interest, plus the late fees. This person's ability to exist and maintain cash flow was dependent upon them getting that check to the credit card company on time, and that's why they were there getting this.

So I agree with Sen. Janeway, that I think there are good things and bad things about this particular industry. And perhaps there are some areas that need to be addressed. I don't know enough about it, just my anecdotal experience leads me to believe that there are people out there that do not have good credit that need this type of cash flow structure to help them out. The penalty for them is much worse than the \$20 that they'll pay the loan company in two weeks for borrowing a hundred dollars or so. So I guess that opened up my eyes at least to this, there's probably a need for this. There probably are abuses of it, but I think that happens in most anything in this state. And I find it ironic that just down the road from this payday loan company was a state liquor store. Now, gee, there is something that this state lives off of, the revenues of the state liquor store. That's something that can be abused. That's something that can't be abused. Right next to the liquor store there's a store that sells lottery tickets. I have a list here of all the Senators who voted to increase the lottery tickets from \$20 to \$30. Now, if we're trying to protect our most vulnerable citizens in this state, then I would have think that some people probably would have voted against increasing the lottery ticket. You can't really get anything out of a lottery ticket except a one-in-a-million odds of winning some money. You can't really use that to pay off your credit card if you lose. So if we're trying to protect our most vulnerable citizens, then maybe we ought to look back and see how we voted on increasing that credit – the lottery ticket to \$30. Right next to the liquor store and the store that sells the lottery tickets, a poker room. Oh my goodness, people in this state gamble. I'm sure the State of New Hampshire doesn't get any of that money. Certainly from the poker rooms, they don't. We wouldn't want to gamble in our state. I guess what I'm saying is it seems pretty hypocritical to me, for us to be concerned about the most vulnerable people in this state when we're taking it from them every chance we can get. Thank you.

(The Chair recognized Sen. Gatsas for a question of Sen. Gottesman.)

SENATOR GATSAS: Sen. Gottesman, can you tell me what the address was for my constituent?

SENATOR GOTTESMAN: It's not in the record, I looked.

SENATOR GATSAS: How would you know he's my constituent?

SENATOR GOTTESMAN: 'Cause I asked you.

SENATOR GATSAS: I told you I didn't know who testified.

SENATOR GOTTESMAN: Well, I told you he was from Manchester, and he said he was from your district. That's all I can tell you.

SENATOR GATSAS: There are two other Senators from Manchester.

SENATOR GOTTESMAN: I can't tell you exactly how that came to be, but I believe that the person who brought him in represented to me that he was from your district.

SENATOR GATSAS: Well, I certainly would hope that you could find out, because I certainly would want to call that constituent to make sure, for the record.

SENATOR GOTTESMAN: Okay.

SENATOR GATSAS: Thank you, Senator.

(The Chair recognized Sen. Barnes for a question of Sen. Bragdon.)

SENATOR BARNES: Sen. Bragdon, you have that roll call vote. I would appreciate you putting on the record where Sen. Barnes voted on that.

SENATOR BRAGDON: Since Sen. Barnes has asked, Sen. Barnes voted against increasing the lottery tickets to \$30.

SENATOR BARNES: Thank you, Senator.

SENATOR BRAGDON: In case you had forgotten. Oh, please don't everybody ask me how they voted.

(The Chair recognized Sen. Bragdon for a question of Sen. Gatsas.)

SENATOR GATSAS: Sen. Bragdon, for the record, can you tell me where Sen. Gatsas voted on that?

SENATOR BRAGDON: For the record, Gatsas: Sen. Gatsas voted no.

SENATOR GATSAS: Thank you.

(The Chair recognized Sen. Clegg to speak.)

SENATOR CLEGG: Thank you, Madam President. I rise in opposition to an ought-to-pass amendment. And I look at some of the testimony, and it's no secret how, how I grew up, how I started my life. And I have to tell you when I see that the Commissioner of the Banking Department says he rejects the argument that people need these loans, I only wish that I had grown up as he had, and I only wish that I had started my life not needing these types of loans. But, unfortunately, not everybody gets to start there. I also look on how he says the people who seek the loans online? Well, he's going to keep issuing cease-and-desist orders. I don't know about you, but last I knew, a lot of those scams were illegal, but every day in my e-mail I win every Kenyan, Nigerian, Cayman Islands and UK Lottery simply with my e-mail address. They're all issued cease-and-desist, but guess what? I can still play the game with them if I want. All's I have to do is send them my routing number for my bank and they'll take as much as they can get.

I also look and see where it says that he thought that people in dire conditions can go to family members. Well, what happens if everybody in your family grew up poor, which is usually the way it works, and you all start out with nothing and nobody has that \$500 to lend you? Where do you go then? Oh, church. Okay. So now is the State saying that everybody has to belong to a church in case they need money? 'Cause not everybody does. And it says go to your friends. I have a lot of good friends and they're smart enough not to lend me \$500. (Laughter) And then it says, "other banks and credit unions." Well, guess what? When you don't have money, the banks don't want to lend you money and neither do the credit unions. I can tell you because I went through it. I went through it in the depression in the '70s when I was a young married person with one child; I went through it again in the '80s when the real-estate market crashed and you could be the best contractor in the world. Guess what? Nobody was building anything. They weren't even taking things down. There was no work. So where do you go? Banks don't want you. Credit unions don't want you. Your friends are in the same position you are. The family's hoping you don't call 'em anymore. You go to the guy who's going to lend you the money because he has it. He's going to charge you high interest rate, but guess what, you have a choice: no food on the table, no roof over your kids' head; you can fail or you can take another chance. My position, I took another chance, and I sweat it out. But I did what I had to do.

And I'll tell you what, I would have much rather have had been doing business with somebody who is regulated, who had a storefront, who everybody knew, so if I needed help, I could have gone there. Instead, I had to go to the black market. And that's where you're going to send these people again. If you don't give them a place to go, it doesn't mean they're going to not need the money. And somebody's going to stand up and say: Well, go to your welfare office. Well, you know what? I'm one of those people that's too embarrassed to go with my hand out to the local community. I'd rather exhaust every other option and opportunity before I go say to a fellow taxpayer: Hey, give me 500 bucks. And no matter what you think about the people who give that money, or who gave me my money, they treated me with respect because I was a customer. Do you ever see how people are treated in the welfare office? Try it sometime. It's not the greatest experience. The fact that you have to lower yourself to even go to the public dole is tough. I would rather, as I said before, go to a payday lender, stand tall, make my deal with them, and then make my payments, because that keeps me a man. That makes me feel proud when I put the food on my table and have a roof over my children's head, that I am still doing it on my own, and I'm not asking anybody for any money that's free. And maybe, just maybe if we keep allowing these people to do business, the welfare rolls will get lower and lower, because more people will take their pride and go get themselves out of the situations that they find themselves in and pay back the money. Welfare Departments aren't in the business of lending money, these people are. Don't take the option that most of us poor folks have had to use, not once, not twice, but numerous times in our life. And since we don't mind using it, you shouldn't mind letting us. Thank you, Madam President.

(The Chair recognized Sen. D'Allesandro to speak.)

SENATOR D'ALLESANDRO: Thank you, Madam President. I think we've had a lengthy discussion about a particular subject. Let me just talk about the record. I introduced a bill that eliminated the cap on small loans. The reason for that was that people couldn't get small loans. The

reason for that was that people couldn't get small loans. There was an inability on the part of the consumer to get a small loan. We then spent time regulating, offering legislation to regulate loans with the cap removed. There seemed to be some ability to do that, we met with some success. As time has gone on, that success seems to have been mitigated by alternative problems.

Now, each of us has a story about our need for a financial resource. There are those of us who grew up poor. There are those of us who grew up in relatively comfortable environments. And the ability to get a loan is really kind of the most difficult situation that I look at because when you really need money, the banks refuse to give you money; when you don't need money, they're very willing to give you as much as you want. I think that's an axiom. My distinguished colleague from Milford: If we closed all the liquor stores in New Hampshire we'd be a boom for business in Maine, Vermont and Massachusetts. We tried prohibition, it didn't succeed. We even tried giving – not giving women the right to vote; that didn't succeed, so we gave them the right to vote. So, you know, we do things like this and in the end we re-think things and we move forward. I think that the situation is this: that we know that we're in a difficult economic time. I mean that's for sure. We also know that people need money.

Now, I got a call from the local welfare director in the City of Manchester about this piece of legislation. He was quite definitive in his support of this piece of legislation. Paul Martineau is a distinguished guy: Army veteran, Bishop Bradley graduate, Wake Forest graduate; very, very capable guy. Runs for public office. He runs for Director of Welfare in the City of Manchester. He called me at my office, he called me at my home, and told me that he supported this piece of legislation. He came up to Concord and I believe gave testimony in support of this piece of legislation. I think we all recognize that the financial markets are in a quandary. We talk about the sub prime loans on homes. We know that foreclosures are happening at quite a dramatic rate, and in many instances people were duped. There comes a point in time when government has to take a stance. And we are the representatives of our government, and we have to take a stance. And we take a stance based on the best possible information that's available to us. We have public hearings. We ask people to come in and give us testimony. These people give us testimony. We have a record. And then, based on that record, we move forward. Does anybody want to put anybody out of a job? Absolutely not. That's, that's – that's not what anybody wants to do. We have enough, we have enough businesses doing that now. Fraser Paper just laid off 185 people up in Gorham, Sen. Gallus' District. There will be further layoffs throughout this state. We're not in a good economic time. But does that mean that we should forego a responsibility, a responsibility to do what we believe is in the public interest and for the public good.

Now, let me give you an example of a response to this situation. The Guardian Credit Union in Berlin offers those seeking a de minimis amount of money, \$500 or less, a line of credit, and they can go to that line of credit and secure their loan. And the loan is not at an exorbitant percentage. I am a director of a credit union in the City of Manchester. I have said to my board of directors, or to *the* board of directors, they're not mine, they're the credit union's board, that we must get into the business of small loans, and if it's capped at 36 percent, we have got to participate, and we have got to participate because it's our responsibility to serve our membership, and our membership was first created for employees of the City of Manchester. So there are ways to deal with the situation. You

know, we have to be responsible and we have to be responsive. These are key elements in every decision that we make. The “responsible” is setting the cap. The “responsive” is providing alternate ways to get the money. That’s our job that we have to do, and I believe the amendment to the next piece of legislation addresses that.

I commend each and every Senator for their activity and discussion in this debate. I think the debate has done one thing that’s crucial: it’s taken a situation and elevated it in the public domain, and that situation is: Listen, we’re in trouble. Our economy is in trouble, and we must find methods to deal with this. We, as legislators; we as individuals. Families have to deal with this. Churches have to deal with this. Welfare Offices have to deal with this. We, as a society, have to deal with this. And we’ll make it through. We’ll make it through because we’ll make decisions that are in the best interest of our constituents. That’s why we’re here. And each one of us has a different opinion, I respect that. But at a time when decisions must be made, they’re brought forward, we have discussion and debate, and we make our decision. The Guardian Credit Union in Berlin made a decision. It made a decision to help. The credit union of which I am a member of the board of directors is going to make a decision. We are going to participate in small loans. We are going to do that because we understand that there’s a demonstrated need. I would hope that every entity involved in this great financial dilemma decides to participate. The Charitable Foundation decides to participate. The banks decide to participate. It’s only by working together that we solve a problem. I don’t think anyone, *anyone* is denying that there’s a problem. The question is, which solution are you going to accept? Thank you, Madam President.

(The Chair recognized Sen. Letourneau to speak.)

SENATOR LETOURNEAU: Thank you, Madam President. I wasn’t going to speak on this bill, but I feel as though I have to say at least some, a couple of words about this, primarily because I’m listed as a cosponsor of the bill. And the bill was introduced last year in 2007. And the sponsor came to me and said that we have this really issue – strong issue here in the state where these guys are charging 500, 600 percent interest, and we need to get it under control. I said, “That’s absurd. I’ll be glad to help you sponsor the bill.” My thought was, and I’ve spoken to Sen. Gottesman about this, is that we were going to try to find a solution to the problem. I didn’t know we were trying to put people out of work and out of business. I thought that Sen. Gatsas had offered a solution to the problem by offering that amendment that would put some restraints and some controls under this particular business and then the commission would have an opportunity to look at it and see how it was working and move forward.

Now, I had a constituent call me two days ago and tell me that – she’s a professional, she works in the real-estate business, and they do not have a reliable income from day to day and that she relies from time to time on these particular loans. Now, this lady makes between 50 and 75 thousand dollars a year, depending on home sales, of which we all know, are down now. They work basically on commission, they don’t get a weekly paycheck. She said: I needed to fill my oil tank up and I didn’t have the money to do it, and I was able to get this short-term loan from this company. Banks won’t lend me money on a short-term basis. And then I asked about the credit card option, and she said, “My credit cards are pretty well maxed out.” So I’m in a quandary here as to what we do for our constituents to

allow them to use this option when they're in dire straights. If I vote for this bill now the way it sits, without that amendment, we put these folks out of business and take that option away from my constituents that tell me they actually need it. If I vote against it, then I'm not fulfilling my obligations to the people that I had said that I would co-sponsor this legislation. So I listened to the debate here on the floor and I'm still in a very strong quandary. I think that the amendment would have solved my problem for me, because we would have reached some middle ground and we would have been able to do something to allow them to still stay in business, keep those jobs, keep this money in circulation in the state, and allow for the folks who need it, to use it. And I'm thinking about the fact that they don't lend money to people who don't have a way of paying it back. So in my mind is, if you can't pay it back, they're not going to give you the money, so how are we – how are we being a predator towards somebody that has no way of paying it back? They're not going to lend you that money if you don't have some, some way of paying it back. So I think I have to vote against this bill, based on the knowledge and the people I've spoke to over the last few days. And I hope that we all take a real long time thinking about this as we vote on this bill. I think that we're going to do some damage here that was not intended. As we always know, there are unintended consequences to things we do here, and I'm really ... and like Sen. Bragdon says, ambivalent up to this point. In the last week this has come to a boil. Thank you, Madam President.

Sen. Estabrook moved the question.

Without objection, the Chair moved to close debate, with further inquiry and three speakers remaining.

(The Chair recognized Sen. Barnes for a question of Sen. Gottesman.)

SENATOR BARNES: Thank you, Madam President. It's a question of Sen. Gottesman. Thank you. Sen. Gottesman, didn't we hear during the testimony that there was a credit union that was stepping up into the business? This is ... I'm raising that question because of what Sen. D'Allesandro said about the credit union. Did we hear that they were – there is one out there that's doing it and there's a move on for all of them to pick up the slack on this when these other people go out, might go out of business?

SENATOR GOTTESMAN: That is correct.

SENATOR BARNES: That *was* the testimony. Thank you, very much.
(The Chair recognized Sen. Gatsas to speak.)

SENATOR GATSAS: Thank you, Madam President. Just to clear the record, 'cause I guess I can still vote against this bill. The one person that Legal Assistance found in the entire State of New Hampshire to come in and testify wasn't from District 16. So they should at least tell the chairman and give the chairman the correct information before they lay somebody on somebody's doorstep. So, and I certainly don't disagree with Sen. D'Allesandro – as a matter of fact, she lives – he lives in Sen. DeVries' District. So now with that clarified, I would hope that we would all get truthful information when people drag people in to testify. And, Sen. D'Allesandro, you're right. The credit unions will step up, there's no question. The only problem is, there's a \$75 membership fee. I don't know how that works in truth and lending when you apply an annual percentage rate to that. So if I'm looking for one loan, there are some credit unions that charge a membership fee. (Unrecorded comment from the floor) Well, whether it's 25 or 75, I've heard some that are 75. If it's

25, what does that account to on a \$300 loan with the membership fee and the interest? That annual percentage rate is gonna be as high as what we're talking now. Unless we're looking for those 58 consecutive loans and then maybe it's not. Thank you, Madam President.

(The Chair recognized Sen. Hassan to speak.)

SENATOR HASSAN: Thank you, Madam President. I rise in support of Senate Bill 267 and the motion of ought to pass as amended. And I just wanted to respond to my friend from Derry. I shared some of the same ambivalence that he has expressed about the need for access to one-time loans for some people in our districts. I also, though, was very concerned with the number of people who have become increasingly vulnerable financially because of the, of their ongoing use of the loans and the mounting interest that comes to bear when they keep repeating the loans. I've come to the conclusion that the only way to deal with this is to put a cap on, because what we will see is, as Sen. D'Allesandro expressed, the nonprofit credit union and banking industry coming together to offer an alternative to those segments of our population that really do need small loans. So I came to this by just strongly believing that until we put a cap on, there wouldn't be the impetus in the safer area of our financial institutions to offer the product that these people need that is a reasonable one, one that they can afford, and one that will not mire some of them in debt, so thank you, Madam President.

(The Chair recognized Sen. Gottesman to speak.)

SENATOR GOTTESMAN: Thank you, Madam President. Since we're in the truth and reconciliation stage of this debate – (Laughter) – as soon as, as soon as I was told by one of the aides that this particular individual who I said lived in Sen. Gatsas' District actually lived in Sen. DeVries' District, I raised my hand to speak. Because I owe Sen. Gatsas an apology, and I do apologize for that. I know when I talked to Sen. Gatsas I told him it was his constituent and I just continued to believe that it was. So my apologies to you. I know that Sen. Gatsas cares about all of the individuals in Manchester, equally, however. And I just would like to – I just would like to clear, for the record, one of Sen. Gatsas' comments, because the testimony from Steve Macek of St. Mary's Bank and the New Hampshire Credit Union League indicated that the membership that they were charging was a one-time charge of \$5 to become a member, at which time they would be able to participate in a credit union opportunity. I think you've heard it all. I ask that you vote in favor of the bill. Thank you.

The question is on the adoption of Ought to Pass as Amended on HB 267.

A roll call was requested by Sen. Barnes, seconded by Sen. Bragdon.

The following Senators voted Yes: Gallus, Reynolds, Sgambati, Burling, Janeway, Roberge, Kelly, Gottesman, Larsen, DeVries, D'Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Kenney, Cilley, Odell, Bragdon, Clegg, Gatsas, Barnes, Letourneau, Downing.

Yeas: 14 - Nays: 9

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

Sen. Foster asserted Rule 42 on HB 267.

Luncheon Recess/Out of Recess.

AFTERNOON SESSION COMMITTEE REPORTS, RESUMED

SB 472, relative to consumer protection from certain practices of payday loan, small loan, and title loan lenders. Commerce, Labor and Consumer Protection Committee. Ought to Pass with Amendment, Vote 6-0. Senator Gottesman for the committee.

Commerce, Labor and Consumer Protection
February 12, 2008
2008-0555s
08/04

Amendment to SB 472

Amend the title of the bill by replacing it with the following:

AN ACT relative to consumer protection from certain practices of payday loan, small loan, and title loan lenders and establishing a commission to study access to consumer credit for people in New Hampshire.

Amend the bill by replacing all after the enacting clause with the following:

1 Findings. The general court recognizes that:

I. Access to consumer credit can provide people with a means by which to navigate gaps in income, establish long-term financial stability, and build household wealth.

II. Certain irresponsible or abusive lending practices and loan products can increase consumers' financial distress, rather than decrease it.

III. Some people may lack access to responsible consumer credit.

IV. Access to responsible consumer credit for people benefits not only individual households, but also local and state economic health.

2 Payday Loan; Definition. Amend RSA 399-A:1, X to read as follows:

X. "Payday loan" means a ~~[small-dollar]~~ short-maturity, secured or unsecured loan, other than a title loan, ~~where the lender contracts for, exacts or receives, directly or indirectly, or where the borrower pays for, directly or indirectly, in connection with any such loan, any charges which in the aggregate are greater than 50 percent per annum].~~

3 Small Loan; Definition. Amend RSA 399-A:1, XIV to read as follows:

XIV. "Small loan" means a closed-end loan in the amount of \$10,000 or less or an open-end loan with a line of credit of \$10,000 or less, and where the lender contracts for, exacts or receives, directly or indirectly, ***or where the borrower pays for, directly or indirectly*** in connection with any such loan any charges, whether for interest, ***examination, commission, compensation, service, brokerage, endorsement fees, other fees, consideration, expense or otherwise, which in the aggregate are greater than 10 percent per annum except for the lawful fees, if any, actually and necessarily paid out by the lender to any public officer, for filing or recording in any public office any instrument securing such loan and except for the reasonable costs, charges, and expenses, including court costs actually incurred in connection with a repossession of the security or an actual sale of the security.***

4 Lender; Definition. Amend RSA 399-A:1, VIII to read as follows:

VIII. "Lender" means individuals, corporations, associations, firms, partnerships, limited liability companies, and joint stock companies or

other forms of organizations that lend money or give credit temporarily on condition that the amount borrowed be returned, usually with an interest fee. "Lender" shall not include a financial institution. ***"Lender" shall include a person who for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly:***

(a) Acts as an intermediary, finder, or agent of a lender or borrower for the purpose of negotiating, arranging, finding, or procuring loans, or commitments for loans.

(b) Offers to serve as agent for any person in an attempt to obtain a loan.

(c) Offers to serve as agent for any person who has money to lend for a loan.

(d) Performs services or any of the business functions auxiliary or supplemental to the production, distribution or maintenance of loans for a lender.

5 License Required. Amend RSA 399-A:2, IV to read as follows:

IV. Any person not exempt under paragraph III, and the several members, officers, directors, agents and employees thereof, who shall willfully violate or participate in the violation of any provisions of paragraph I shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person. If in the making or collection of a loan the ~~[licensee]~~ ***person*** violates paragraph I of this section, the loan contract shall be void and the lender shall have no right to collect, receive, or retain any principal, interest, or charges whatsoever.

6 New Paragraph; License Required. Amend RSA 399-A:2 by inserting after paragraph IV the following new paragraph:

V. The provisions of this chapter shall apply to any person who seeks to evade its application by any device, subterfuge, or pretense, including, without limitation:

(a) Calling a loan by any other name;

(b) Using any agents, affiliates, or subsidiaries in an attempt to avoid the application of the provisions of this chapter; or

(c) Having any affiliation or other business arrangement with an entity that is exempt from the provisions of this chapter, the effect of which is to evade the provisions of this chapter, including, without limitation, making a loan, while purporting to be the agent of such an exempt entity where the purported agent holds, acquires, or maintains a preponderant economic interest in the revenues generated by the loan.

7 No Refinancing of Payday Loans. Amend RSA 399-A:11, X to read as follows:

X. If a borrower desires to renew an existing closed-end loan~~[- payday loan-]~~ or title loan for the purpose of obtaining additional cash a new contract shall be drawn up in its entirety and such prior loan shall be paid in full from such proceeds of the new loan. ***Payday loans shall not be rolled over, renewed, or refinanced.*** All legal papers in connection with such prior loan shall be stamped "PAID IN FULL" and returned to such borrower.

8 Debit Authorization. Amend RSA 399-A:13, II(d)-(e) to read as follows:

(d) Evidence of receipt from the borrower of a check~~[-]~~ ***or other account debit authorization***, dated the same date, as security for the loan, stating the amount of the check, ***if a check or other account debit authorization was given by the borrower.***

(e) An agreement by the lender not to present the check ***or other account debit authorization*** for payment or deposit until a specified

maturity date, which date shall be at least 7 days and not more than 30 days after the date the loan is made and after which date interest shall not accrue at a greater rate than 6 percent per year, ***if a check or other account debit authorization was given by the borrower.***

9 Commission Established. There is established a commission to study access to consumer credit for people in New Hampshire.

10 Membership and Compensation.

I. The members of the commission shall be as follows:

(a) Two members of the senate, appointed by the president of the senate.

(b) Two members of the house of representatives, appointed by the speaker of the house of representatives.

(c) The governor, or designee.

(d) The bank commissioner, or designee.

(e) The attorney general, or designee.

(f) A representative of Consumer Credit Counseling of New Hampshire and Vermont, appointed by that organization.

(g) Two representatives of the New Hampshire Bankers Association, appointed by that organization.

(h) A representative of the New Hampshire Community Loan Fund, appointed by that organization.

(i) Two representatives of the New Hampshire Credit Union League, appointed by that organization.

(j) A representative of the New England Financial Services Association, appointed by that organization.

(k) A representative of New Hampshire Legal Assistance, appointed by that organization.

(l) A representative of the New Hampshire Local Welfare Administrators Association, appointed by that organization.

II. Legislative members of the commission shall receive mileage at the legislative rate when attending to the duties of the commission.

11 Duties. The commission shall examine the following:

I. The varieties of consumer credit currently available to people in New Hampshire;

II. The varieties of non-credit emergency assistance currently available to people in New Hampshire;

III. The impact of irresponsible or abusive lending practices and loan products on people in New Hampshire;

IV. The potential for market-based development of new varieties of responsible consumer credit for people in New Hampshire; and

V. Possible legislation to improve access to responsible consumer credit for people in New Hampshire.

12 Chairperson; Quorum. The members of the study commission shall elect a chairperson from among the members. The first meeting of the commission shall be called by the first-named senate member. The first meeting of the commission shall be held within 45 days of the effective date of this section. Five members of the commission shall constitute a quorum.

13 Report. The commission shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 14, 2008.

14 Effective Date.

I. Sections 1, and 9-14 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect January 1, 2009.

2008-0555s**AMENDED ANALYSIS**

This bill redefines payday loan, small loan, and title loan.

This bill establishes a commission to study access to consumer credit for people in New Hampshire.

SENATOR GOTTESMAN: Thank you, Madam President. I move ought to pass on Senate Bill 472 as amended. The amended version of Senate Bill 472 has been stripped of its original language, the intent of which is now expressed in House Bill 267 that we just took up. As amended, the bill contains two important additional consumer protection measures relative to payday and title loan industry. And I might add that there will be a further floor amendment that Sen. D'Allesandro will offer, after. First, as requested by the Banking Department, this bill would further define those companies that could otherwise avoid the regulation of small payday or title lenders, which House Bill 267 will apply. This bill will prevent these companies from skirting the intent of the legislation in order to continue to trap our consumers in a cycle of debt. The additional language also makes clear that in New Hampshire we will no longer permit payday loans to be rolled over.

Second, the legislation begins to address the question of what new alternatives we can support for New Hampshire citizens who need access to short-term cash. Recognizing that access to consumer credit can provide our citizens with a means by which to navigate gaps in income, establish long-term financial stability, and build household wealth, Senate Bill 472 would establish a committee to study access to consumer credit for people in New Hampshire. Represented on the study committee will be members of both chambers, the Attorney General's Office, the Commissioner of Banking, representatives from the Consumer Credit Counseling Association, the New Hampshire Community Loan Fund, the New Hampshire Credit Union League, New England Financial Services Association, New Hampshire Legal Assistance, New Hampshire Local Welfare Administrators' Association and through the amendment that Sen. D'Allesandro will offer, a representative of the payday loan industry as appointed by the Governor.

The commission will be effective immediately upon passage of SB 472 and will issue a report on November 14, 2008 so that its findings and recommendations will be available nearly two months before the implementation of House Bill 267. This study commission will work to develop strategies through which credit unions, banks and non-profit organizations can engage the unbanked and undeserved – underserved, to hopefully help them avoid payday and title loan traps. We understand that it is important to both rein in the unscrupulous practices of these lenders while offering a better alternative to the people of New Hampshire. I believe that House Bill 267 and Senate Bill 472 together offer such a solution. Please join the members of the Commerce, Labor and Consumer Protection Committee in voting Senate Bill 472 ought to pass as amended, and then as to a further floor amendment that will be offered by Sen. D'Allesandro. Thank you.

(The Chair recognized Sen. D'Allesandro to speak.)

SENATOR D'ALLESANDRO: Thank you, Madam President. I rise in support of Senate Bill 472, and in particular, to support the establishment of a commission to look at how to help make sure that low- and moderate-income residents in New Hampshire have access to reasonable

and affordable consumer credit options. The “American Dream” is founded on the belief that people who work hard to earn a good living should be able to live in a relatively comfortable environment with dignity. But that dream is harder to achieve for many of our residents because they’re losing their hard-earned money to excessive fees paid upon high-priced payday and title loans. In fact, we’ve just heard that our citizens are spending more than \$5 million per year on payday and title loan fees. Having just voted in favor of House Bill 267, I can only imagine the social and economic benefits of putting that 5 million toward a more reasonable financial opportunity. I think that a wide range of banking, credit union and consumer representatives that will do the work on this commission will be able to increase the market for basic financial services and short-term cash options within the 35 percent interest cap. We already know that some of them are moving forward. I also support including a representative of the payday lending industry as part of this commission’s work. If Senate Bill 472 is voted favorably, then I intend to offer a floor amendment to include one such industry representative. I recognize that this industry has met a need for some of our citizens, and if they desire to adjust their existing business model and continue to serve our communities, then I want them to have a place at the commission table. We need leaders across the state in the public and private sector to broaden the access to short-term loans within the rate framework established in House Bill 267. This will help reduce the financial stress in workers’ lives, and create more hope and opportunity for our citizens to achieve the “American Dream.” I urge your support of Senate Bill 472 as amended, and if it passes, we’ll offer a floor amendment. Thank you, Madam President.

(The Chair recognized Sen. Gatsas to speak.)

SENATOR GATSAS: Thank you, Madam President. I rise in opposition to the piece of legislation. Certainly, we can sit here and express that it’s “feel-good” legislation because we’re going to study something and within 45 days we’re going to put those people out of business, ‘cause there’s nothing – if the committee comes back and says that: You know, we made a mistake and payday loans certainly helped every individual that they’ve taken care of in the State of New Hampshire. Oh but, by the way, in 45 days you’re out of business and you’re going to have to wait for the next Legislature to come in and put in legislation to restore them. And I guess we’re just saying to those people, come in and sit for four months on a commission or a committee that’s gonna put you out of business, and even if you have some real good things to say, January 1st you’re all done. That doesn’t make any sense to me. This is like a “feel-good” piece of legislation that says we just threw you – we just threw you out the window and there’s somebody out there trying to catch you with a pillow case. It doesn’t make any sense to me. If the bill before us that we just voted in place would have put a date of 2010, then this piece of legislation would make sense. But to say to somebody, “We’re going to study you, but you’re out of business in January” makes no sense. None. Zero. And twice I’ve heard that they’ve earned \$5 million. Well, I don’t know, they’ve lent 56, they’ve earned five. If I annualize that number, it looks like 10 percent. That’s not a bad number. Ten percent. It’s not 300. It’s not 400. We are finally telling the truth. Truth in Lending is before us. Five million dollars on \$56 million is less than 10 percent. That’s a fact. I’m glad that fact has come out for the second time today. Thank you, Madam Chairman. Madam President, I’m sorry.

The question is on the adoption of Committee Amendment 0555s.
A roll call was requested by Sen. Gottesman, seconded by Sen. Barnes.

The following Senators voted Yes: Reynolds, Sgambati, Burling, Cillely, Janeway, Odell, Roberge, Kelly, Bragdon, Gottesman, Larsen, Barnes, DeVries, D'Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Kenney, Clegg, Gatsas, Letourneau, Downing.

Yeas: 17 - Nays: 6

Committee Amendment 0555s adopted.

Sen. Foster asserted Rule 42 on SB 472.

Sen. D'Allesandro offered a floor amendment.

Sen. D'Allesandro, Dist. 20

February 14, 2008

2008-0614s

08/09

Floor Amendment to SB 472

Amend paragraph I of section 10 of the bill by inserting after subparagraph (l) the following:

(m) A representative of the payday lending industry, appointed by the governor.

SENATOR D'ALLESANDRO: Thank you, Madam President. I'd like to offer Floor Amendment 0614s, and ask that it be passed out.

PRESIDENT LARSEN: You may speak to that as 0461 – 0614 has been proposed and is being distributed.

SENATOR D'ALLESANDRO: Thank you, Madam President. Once you get the amendment it just makes one minor change. It adds (m). It amends "paragraph I of section 10 of the bill by inserting after subparagraph (l) the following: (m) A representative of the payday lending industry, appointed by the governor." This gives the payday lending industry a place at the table for these discussions, for this report that will come back on November 14th, and I think gives an opportunity for an open and frank discussion as to how they can play in aiding customers here in the State of New Hampshire. Thank you, Madam President.

The question is on the adoption of Floor Amendment 0614s.

Floor Amendment 0614s adopted.

Sen. Foster asserted Rule 42 on SB 472.

The question is on the adoption of Ought to Pass as Amended on SB 472.

A roll call was requested by Sen. Gottesman, seconded by Sen. Barnes.

The following Senators voted Yes: Reynolds, Sgambati, Burling, Cillely, Janeway, Odell, Roberge, Kelly, Bragdon, Gottesman, Larsen, Barnes, DeVries, D'Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Kenney, Clegg, Gatsas, Letourneau, Downing.

Yeas: 17 - Nays: 6

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

Sen. Foster asserted Rule 42 on SB 472.

SB 439, relative to money transmitters and mortgage servicing companies. Commerce, Labor and Consumer Protection Committee. Ought to Pass with Amendment, Vote 6-0. Senator DeVries for the committee.

Commerce, Labor and Consumer Protection

February 12, 2008

2008-0561s

08/10

Amendment to SB 439

Amend the bill by replacing sections 2-3 with the following:

2 New Paragraph; Definition. Amend RSA 399-G:1 by inserting after paragraph VIII the following new paragraph:

VIII-a. "Net worth" means assets minus liabilities calculated in accordance with generally accepted accounting principles.

3 License Application; Requirements; Investigation. Amend RSA 399-G:5, II(b)-(c) to read as follows:

(b) Each license application shall be accompanied by a nonrefundable application fee of \$500 for each principal office and \$25 for each authorized delegate registration, up to a maximum annual fee of [~~\$4,000~~] **\$5,000**. Sums collected under this chapter shall be payable to the state treasurer as restricted revenue and credited to the appropriation for the commissioner, consumer credit administration division.

(c) Each applicant shall submit detailed financial information sufficient for the commissioner to determine the applicant's ability to conduct the business of a money transmitter with financial integrity. The application shall include a statement of net worth in all cases and an applicant shall demonstrate and maintain a positive net worth computed in accordance with generally accepted accounting principles. ***A licensee shall at all times maintain a net worth of the lesser of its average daily outstanding money transmissions for the prior calendar year or \$1,000,000.*** Net worth statements provided in connection with a license application under this section shall be subject to review and verification during the course of any examination or investigation conducted under the authority of RSA 399-G:13. Each money transmitter applicant shall post a continuous surety bond in the amount of \$100,000. The surety bond shall be payable to the State of New Hampshire and the bank commissioner of the State of New Hampshire for the benefit of any person who is damaged by any violation of this chapter and shall be conditioned upon the licensee's compliance with each provision of this chapter. Surety bonds shall include a provision requiring the surety to give written notice to the commissioner 20 days in advance of the cancellation or termination of the bond. Every bond shall provide that no recovery may be made against the bond unless the state makes a claim for recovery or the person brings suit naming the principal within 6 years after the act upon which the recovery or suit is based. The obligations of the surety shall survive the bankruptcy, insolvency, liquidation, or reorganization of the licensee, including, without limitation, any bankruptcy, insolvency, liquidation, or reorganization commenced by or against the licensee under any applicable state or federal law, including the United States Bankruptcy Code.

Amend RSA 399-G:13, II-a as inserted by section 5 of the bill by replacing it with the following:

II-a. Licensees shall implement a system of education, training, monitoring, and periodic inspection designed to reasonably supervise their authorized delegates' filings with the Department of the Treasury, Financial Crimes Enforcement Network (FINCEN).

SENATOR DEVRIES: Thank you, Madam President. I move Senate Bill 439 ought to pass with amendment. As amended, this legislation makes several technical changes to the Money Transmitter Act. The bill requires a transmitter to maintain a net worth of at least a million dollars or its average outstanding daily monetary transmissions. It also allows the Banking Department to examine the records of the licensee's authorized delegates. Finally, the bill requires a money transmitter to implement a system to educate and train authorized delegates to ensure that potentially illegal activity or suspect actions are monitored and reported. This bill was requested by the Banking Department. Please join the members of Commerce, Labor and Consumer Protection Committee in voting Senate Bill 439 ought to pass with amendment.

The question is on the adoption of Committee Amendment 0561s.

Committee Amendment 0561s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 439.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 352-FN, relative to shoreland protection. Energy, Environment and Economic Development Committee. Ought to Pass with Amendment, Vote 6-0. Senator Fuller Clark for the committee.

Sen. Fuller Clark, Dist. 24

February 7, 2008

2008-0455s

06/09

Amendment to SB 352-FN

Amend the bill by replacing all after section 5 with the following:

6 Fill and Dredge in Wetlands; Appeals. Amend RSA 482-A:10, I through VIII to read as follows:

I. Any person aggrieved by a decision made by the department under RSA 482-A:3 ~~[or subject to an order of the department under RSA 482-A:6]~~ may apply for reconsideration by the department, and then may appeal to the wetlands council and to the ~~[superior]~~ **supreme** court as provided in this section. A person aggrieved under this section shall ~~[include without limitation,]~~ **mean** the applicant and any person required to be noticed by mail in accordance with RSA 482-A:8 and RSA 482-A:9.

I-a. Any person subject to an order of the department under RSA 482-A:6 may appeal to the wetlands council and to the supreme court as provided in this section. The appellant shall not first request reconsideration, but shall file the appeal directly with the council as provided in paragraph IV, within 30 days of the date of the order.

II. A request for reconsideration ***of a department decision under RSA 482-A:3*** shall be filed with the department within ~~[20]~~ **30** days of issuance of the department's decision ~~[or order]~~. The request for reconsideration shall describe in detail each ground for ~~[complaint. No ground not set forth in the request for reconsideration shall be considered by the council, or by the superior court except as provided in paragraph VII of this section]~~ ***the request for reconsideration.***

III. On reconsideration, the department shall receive and consider any new and additional evidence presented, and shall make findings of fact and rulings of law in support of its decision after reconsideration. The department may hold a public hearing in accordance with its rules. Reconsideration hearings shall not be subject to the requirements of RSA 541-A. Reconsideration hearings shall be noticed in accordance with **rules adopted by the department, which notice shall also be sent to all persons entitled to notice of applications under RSA 482-A:8 and RSA 482-A:9**, and the department shall make a record of the proceedings. The department shall grant or deny the [application] **request** for reconsideration within 30 days of the [service] **department's receipt** of the [application] **request** or explain in writing to the applicant why the [application] **request** cannot be acted on and a statement of the time reasonably necessary to act on the [application] **request**. **When the basis for denial was failure by the applicant to submit all requested information and the applicant submits all of the requested information with the request for reconsideration, the department shall act on the request within 75 days from the date of the department's receipt of the request for projects where the applicant proposes less than one acre of jurisdictional impact, and within 105 days for all other projects.**

IV. An appeal from a decision of the department **under RSA 482-A:3** after reconsideration, **or an appeal from an order issued by the department under RSA 482-A:6**, shall be filed with the wetlands council within 30 days of the department's decision **or order**. An appeal shall be considered timely filed and received by the wetlands council if postmarked or hand delivered to the wetlands council on or before the thirtieth day from the date of the department's decision. Filing of the appeal shall be made by certified mail or hand delivery to the wetlands council, with a copy sent to the department. An appeal to the council shall contain a detailed description of the land involved in the department's decision and shall set forth fully every ground upon which it is claimed that the decision complained of is unlawful or unreasonable. **Only those grounds set forth in the appeal shall be considered by the council.**

V. The council on appeal shall hold ~~a non-evidentiary~~ **an adjudicative** hearing as provided in [its] **RSA 541-A and the council's** rules. The hearing shall be noticed in accordance with **RSA 541-A:31, III. For appeals of department decisions under RSA 482-A:3, the notice shall also be sent to all persons entitled to notice of applications under RSA 482-A:8 and RSA 482-A:9.** ~~[The department shall provide the council with its record of decision upon receiving notice of the hearing. The appeal shall be determined upon the record below.]~~ The burden of proof shall be on the party seeking to set aside the department's decision to show that the decision is unlawful or unreasonable. On appeal of requests proposed, sponsored, or administered by the department of transportation, there shall be a rebuttable presumption that there is a public need for the requested project, and that the department of transportation has exercised appropriate engineering judgment in the project's design. All findings of the department upon all questions of fact properly before it shall be prima facie lawful and reasonable.

V-a. Any person whose rights will be directly affected by the outcome of the appeal may appear and become a party to the appeal. Any person whose rights may be directly affected by the outcome of the appeal may file a request to intervene as provided in RSA 541-A:32.

VI. On appeal, the council may affirm the decision of the department or may remand to the department with a determination that the decision complained of is unlawful or unreasonable. The council shall specify the factual and legal basis for its determination and shall identify the evidence in the record ***created before the council*** that supports its decision.

VII. Any party aggrieved by a decision of the council may apply to the council for reconsideration ~~[within 20 days of the council's order. The council shall grant or deny the application for reconsideration at its first regularly scheduled meeting after service of the application. The council may grant such application if in its opinion good reason therefor is stated]~~ ***as specified in RSA 541.***

VIII. Any ~~[person]~~ ***party*** aggrieved by a decision of the council after reconsideration may appeal to the ~~[superior]~~ ***supreme*** court ~~[for the county where the land in question is located by petition within 30 days of issuance of such decision. The petition shall set forth each ground upon which the decision is claimed to be unlawful or unreasonable, in whole or in part. No ground not set forth in the application for reconsideration shall be given any consideration by the court unless the court for good cause shown shall allow the appellant to specify additional grounds]~~ ***as specified in RSA 541.***

7 Appeals. Amend RSA 482-A, XVIII to read as follows:

XVIII. If a permit is granted with respect to any activity proposed to be undertaken in or adjacent to a prime wetland as mapped, designated, and filed pursuant to RSA 482-A:15, the conservation commission or local governing body may ***request reconsideration by the department and, if aggrieved by the decision or reconsideration,*** appeal said decision to the ~~[superior]~~ ***wetlands council and the supreme*** court in the manner prescribed in this section. The filing of a request for reconsideration shall automatically stay the effectiveness of the department's decision relating to said prime wetland. Said stay shall remain in force until the department has issued its decision after reconsideration.

8 Repeal. RSA 482-A, X through XVII relative to appeals, is repealed.

9 Effective Date. This act shall take effect 60 days after its passage.

2008-0455s

AMENDED ANALYSIS

This bill gives the wetlands council jurisdiction over appeals of department of environmental services decisions relating to protected shorelands.

SENATOR FULLER CLARK: Thank you very much, Madam President. I move Senate Bill 552 ought to pass – 352 ought to pass with amendment. This bill gives the Wetland Council jurisdiction over appeals of the Department of Environmental Services' decisions relating to protecting shorelands. There are currently areas of overlapping jurisdiction between the Shoreland Program and the Wetland Program within DES, resulting in the possibility that appeals could be filed with both the Water Council and the Wetlands Council over the same issue at the same time. The bill also changes the hearing process from nonevidentiary to evidentiary, bringing the Wetlands Council appeals process in line with the way all other councils at DES handle their appeals. The Committee agreed that without this change, both the public and DES are at a disadvantage, based on the nature of the issues being reviewed, not to mention the confusion that it creates in the deliberation process. Please join the Energy, Environment and Economic Development Committee and vote ought to pass with amendment. Thank you, Madam President.

**The question is on the adoption of Committee Amendment 0455s.
Committee Amendment 0455s adopted.**

**The question is on the adoption of Ought to Pass as Amended
on SB 352-FN.**

(The Chair recognized Sen. Kenney for a question of Sen. Fuller Clark.)

SENATOR KENNEY: A question of Sen. Clark, if I could. If one of my constituents around my lakes in Carroll County has a hardship request such with the 50-foot setback, they would now go to, under this bill if passed into law, to the Wetlands Council; is that my understanding?

SENATOR FULLER CLARK: They would first go to the Department of Environmental Services, and if they were denied the variance, they could contest it at the Wetlands Council. Appeal it.

SENATOR KENNEY: Okay. Just a follow-up. So at that point, they would go to a – two separate entities; one for, I guess, appeal, and one for hardship?

SENATOR FULLER CLARK: No. I don't believe so. I believe this was to streamline the process, but I will check that.

SENATOR KENNEY: Okay. Thank you.

**The question is on the adoption of Ought to Pass as Amended
on SB 352-FN.**

**Motion of Ought to Pass as Amended adopted, bill ordered to Third
Reading.**

SB 403, relative to large withdrawals of water from aquifers within municipal boundaries. Energy, Environment and Economic Development Committee. Inexpedient to Legislate, Vote 3-2, Senator Fuller Clark for the committee.

MOTION TO TABLE

Sen. Fuller Clark moved to have SB 403 laid on the table.

Motion adopted.

Sen. Hassan asserted Rule 42 on SB 403.

LAID ON THE TABLE

SB 403, relative to large withdrawals of water from aquifers within municipal boundaries.

SB 510-FN-A, relative to fees for terrain alteration permits. Energy, Environment and Economic Development Committee. Inexpedient to Legislate, Vote 6-0. Senator Hassan for the committee.

SENATOR HASSAN: Thank you, Madam President. I move Senate Bill 510 inexpedient to legislate. This bill reduces fees for terrain alteration permits. The Committee received testimony in opposition to the bill from both the Department of Environmental Services as well as the regulated community affected by terrain alteration permits. The regulated community feels, and the Committee agrees, that last year's increase in fees was worth the faster turnaround time that they're now seeing from the Department of Environmental Services on these projects. Please join the Energy, Environment and Economic Development Committee and vote inexpedient to legislate. Thank you.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on SB 510-FN-A.

Motion of Inexpedient to Legislate adopted.

SB 528-FN, relative to a mercury-added thermostat collection program. Energy, Environment and Economic Development Committee. Ought to Pass, Vote 6-0. Senator Fuller Clark for the committee.

SENATOR FULLER CLARK: Thank you very much, Madam President. I move Senate Bill 528-FN ought to pass. This bill establishes a mercury-added thermostat collection program and is the result of the work and recommendation of the Thermostat Recycling Study Committee. Thermostats contain up to more than three grams of mercury and are one of the products with the greatest amount of this toxic substance. Last year we banned the sale of any products – new products with mercury, but the issue that we're dealing with now is the legacy for those thermostats that are still in place. They're also one of the most commonly found mercury-added devices in the home; therefore, properly recycling these items will keep a significant amount of mercury out of New Hampshire's waste stream. The mercury-added thermostat collection program being established by SB 528-FN is in line with the New Hampshire Mercury Reduction Strategy and regional, national and international efforts. Please join the Energy, Environment and Economic Development Committee and vote ought to pass. Thank you, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on SB 528-FN.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 309-FN, relative to the regulation of amateur and professional fighting sports by the boxing and wrestling commission. Executive Departments and Administration Committee. Ought to Pass with Amendment, Vote 5-0. Senator Fuller Clark for the committee.

Senate Executive Departments and Administration
February 7, 2008
2008-0438s
10/03

Amendment to SB 309-FN

Amend the bill by replacing section 12 with the following:

12 Effective Date. This act shall take effect upon its passage.

SENATOR FULLER CLARK: Madam President, thank you very much. I move Senate Bill 309-FN ought to pass with amendment. This bill allows the Boxing and Wrestling Commission to regulate other fighting sports, including martial arts, and gives authority to the Commission, updates the authority of the Commission with regard to rulemaking. This legislation will ensure that the Commission is able to fulfill its obligations by ensuring better safety for participants and consumers who are involved in any of the martial arts and fighting sports in the state. The amendment simply makes the legislation effective upon passage. Please join with the EDA – ED&A Committee members in their recommendation of ought to pass with amendment. Thank you, Madam President.

The question is on the adoption of Committee Amendment 0438s.
Committee Amendment 0438s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 309-FN.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 317-FN, relative to the retail sale of tobacco products. Executive Departments and Administration Committee. Ought to Pass with Amendment, Vote 6-0. Senator Kelly for the committee.

**Senate Executive Departments and Administration
February 8, 2008
2008-0468s
03/04**

Amendment to SB 317-FN

Amend RSA 178:29, V-a(a) as inserted by section 16 of the bill by replacing it with the following:

(a) Retail tobacco license, \$6.

SENATOR KELLY: Thank you, Madam President. I move Senate Bill 317-FN ought to pass with amendment. The bill transfers licensing from retail tobacco sales from the Department of Revenue Administration to the Liquor Commission. Each manufacturer or wholesaler will receive a secure license from the Commission before engaging in the business of selling and distributing tobacco products or to continue to engage in business in the State of New Hampshire. The Commission may suspend or revoke any license under RSA 78:2 for failure to comply with the provisions made by the Commission. The amendment clarifies the original intent to charge \$6 instead of \$60 for the annual tobacco license. This legislation is well-supported by the New Hampshire Liquor Commission, Breathe New Hampshire, Groceries Association and the American Cancer Society. Please support ED&A in the motion of ought to pass with amendment. Thank you.

(The Chair recognized Sen. Barnes for a question of Sen. Kelly.)

SENATOR BARNES: Well, I understand I have to ask a question of someone who has spoken. Sen. Kelly, are you a lawyer?

SENATOR KELLY: Sen. Barnes, I have a law degree, but I don't practice law.

SENATOR BARNES: Okay, then you have a law degree, you probably can help me out. I'm on page three and down here on line ... where am I? Line 23. It's talking about manslaughter in the first degree.

SENATOR KELLY: Where are you? I'm sorry, Senator.

SENATOR BARNES: I'm on page three.

SENATOR KELLY: Page three.

SENATOR BARNES: Of the bill as introduced. It gives – it's under the exceptions of what's excepted.

SENATOR KELLY: And your question?

SENATOR BARNES: Yeah. My question is, "manslaughter 1" is what this is saying. Help me out, what is manslaughter 2?

SENATOR KELLY: I am going to refer to an attorney here that does practice law, especially in the criminal ...

SENATOR BARNES: I appreciate that, because manslaughter 2 is in here and I just want to know what manslaughter 1 and manslaughter 2, what's the difference and what's going on here. Why isn't that part of the bill?

SENATOR KELLY: Sen. Foster, could I defer to?

SENATOR BARNES: I am trying to figure out what manslaughter 1 and manslaughter 2 is, and why, if manslaughter 2 sounds pretty severe to me, why it isn't part of the exceptions in this piece of the legislation?

SENATOR FOSTER: I think manslaughter 2 would be a lesser crime, actually.

SENATOR BARNES: The person isn't really dead when they kill him? They're only half dead? (Laughter)

SENATOR GOTTESMAN: Well, they kill them twice.

SENATOR FOSTER: It may be the level of intent or that sort of thing involved. Like with first- and second-degree murder, first-degree murder is worse than second degree.

SENATOR BARNES: And what is the difference between first- and second-degree murder?

SENATOR FOSTER: First can be premeditated. Second degree can be in a fit of rage or incitement – I'm looking at legal counsel, and he's shaking his head that he believes that's –that I am describing at least that accurately. So, that's what I would answer for you.

SENATOR BARNES: Follow-up question for Sen. Foster.

PRESIDENT LARSEN: Sen. Barnes, Sen. Foster had not spoken so, it was not – he was actually not recognized to answer the first question.

SENATOR FOSTER: Oh, I'm sorry, Madam President. I thought because Sen. Kelly deferred to me ...

SENATOR BARNES: Well, okay. Then I'll –

PRESIDENT LARSEN: If you can hold your question for one of the other speakers, I suspect you'll get your question answered.

Recess/Out of Recess.

(The Chair recognized Sen. Burling to speak to SB 317-FN.)

SENATOR BURLING: Thank you, Madam President. Madam President, I just wanted to highlight a typo resolution which I'm sure all of you have caught, and I bet all of you will be asking questions about. As you look at the correction of the \$60 down to \$6 fee, that being a simple transposition of the decimal point, when you look at the existing graph in the fiscal note, you'll notice that that goes uncorrected. Strangely enough, it's impossible to correct a fiscal note before we actually adopt the amendment, but we are reassured in committee that the minute the amendment passes and the bill passes, the fiscal note will change and the \$60 proposed fee will immediately become a \$6 proposed fee. At any rate, I don't understand how that worked, either, but the typo was consistent throughout the original version of the bill, we fixed it, but we could not, by our action, repair the fiscal note. It will be repaired instantly upon our passage of this bill. Thank you, Madam President.

(The Chair recognized Sen. Clegg for a question of Sen. Burling.)

SENATOR CLEGG: Sen. Burling, so if I look at the fiscal note, the retail tobacco license has a current fee of \$10 and will be reduced to \$6?

SENATOR BURLING: That is correct.

SENATOR CLEGG: Thank you.

**The question is on the adoption of Committee Amendment 0468s.
Committee Amendment 0468s adopted.**

**The question is on the adoption of Ought to Pass as Amended
on SB 317-FN.**

**Motion of Ought to Pass as Amended adopted, bill ordered to Third
Reading.**

SB 318-FN, relative to licensed veterinary assistant practitioners. Executive Departments and Administration Committee. Ought to Pass with Amendment, Vote 4-0. Senator Cilley for the committee.

**Senate Executive Departments and Administration
February 8, 2008
2008-0467s
01/05**

Amendment to SB 318-FN

Amend the title of the bill by replacing it with the following:

AN ACT establishing a commission to study the creation of a large animal care worker classification.

Amend the bill by replacing all after the enacting clause with the following:

1 Commission Established. There is established a commission to study the creation of a large animal care worker classification.

2 Membership and Compensation.

I. The members of the commission shall be as follows:

(a) Two members of the senate, appointed by the president of the senate.

(b) Two members of the house of representatives, one of whom shall be from the house environment and agriculture committee, appointed by the speaker of the house of representatives.

(c) The commissioner of the department of agriculture, or designee.

(d) The director of the Thompson School of Applied Science, university of New Hampshire, or designee.

(e) A representative of the New Hampshire Veterinary Medical Association, appointed by the association.

(f) Two representatives of the board of veterinary medicine, one of whom shall be the board's legal counsel, appointed by the board.

(g) A representative of the New Hampshire Veterinary Technician Association, appointed by the association.

(h) Six representatives of the New Hampshire Farm Bureau Federation, appointed by the association.

II. Legislative members of the commission shall receive mileage at the legislative rate when attending to the duties of the commission.

3 Duties. The commission shall study the creation of a large animal care worker classification to perform the basic care of large animals independently in the field under the supervision of a veterinarian. The commission's study shall include, but not be limited to, defining the necessary accreditation for this position and the scope of the allowable practices for such position.

4 Chairperson; Quorum. The members of the commission shall elect a chairperson from among the members. The first meeting of the com-

mission shall be called by the first-named senate member. The first meeting of the commission shall be held within 45 days of the effective date of this section. Six members of the commission shall constitute a quorum.

5 Report. The commission shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2008.

6 Effective Date. This act shall take effect upon its passage.

2008-0467s

AMENDED ANALYSIS

This bill establishes a commission to study the creation of a large animal care worker classification.

SENATOR CILLEY: Thank you, Madam President. I move SB 318-FN ought to pass with amendment. The original bill sought to offer some relief to the problems that have been increasing throughout our state as a result of the shortage in practicing veterinarians, most notably large animal practitioners. Due to a number of technical issues relative to the original bill, an amendment was brought forward that will allow the issue to be further studied and a more workable solution to be brought forward. This bill now is a starting point to study the creation of a large animal care worker classification to perform the basic care of large animals independently in the field under the supervision of a veterinarian. The amendment replaces the entire bill as a study commission to ensure members and duties. This will be a working commission supported and made by members or designees of the New Hampshire Department of Agriculture, New Hampshire Veterinarian Licensing Board, the New Hampshire Farm Bureau Federation and the New Hampshire Veterinary Technician Association. Please join the ED&A Committee, ought to pass with amendment. Thank you.

The question is on the adoption of Committee Amendment 0467s.

Committee Amendment 0467s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 318-FN.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 331-FN, establishing new positions and realigning functions at the department of corrections. Executive Departments and Administration Committee. Ought to Pass, Vote 5-0. Senator Downing for the committee.

SENATOR DOWNING: Thank you, Madam President. I move Senate Bill 331-FN ought to pass. This bill was requested by the New Hampshire Department of Corrections. Specifically, this legislation specifies certain unclassified positions – Inspector General, Director of Security, and Director of Vocational Training and Industries – within the Department. The Department of Correction needs these positions to fulfill its mission and the funding of these positions was approved last year and is included in their budget. Please join the ED&A Committee, ought to pass. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on SB 331-FN.

Motion of Ought to Pass adopted, bill ordered to Committee on Finance (Rule 26).

SB 332-FN, relative to resomation of human remains. Executive Departments and Administration Committee. Ought to Pass with Amendment, Vote 4-0. Senator Fuller Clark for the committee.

**Senate Executive Departments and Administration
February 7, 2008
2008-0434s
01/04**

Amendment to SB 332-FN

Amend the bill by replacing all after the enacting clause with the following:

1 New Chapter; Resomation of Human Remains. Amend RSA by inserting after chapter 325-A the following new chapter:

CHAPTER 325-B

RESOMATION OF HUMAN REMAINS

325-B:1 Definitions. In this chapter:

I. "Alkaline hydrolysis" means the technical process that uses a high-temperature water-based alkali solution under a high pressure system to reduce human remains to bone shadows.

II. "Alternative container" means a container in which human remains are placed for transport and temporary holding prior to resomation.

III. "Authorizing agent" means a person vested with the right to control the disposition of human remains pursuant to RSA 290, including but limited to, family members or funeral directors in charge of the final disposition arrangements.

IV. "Bio-ash" means the reduction of bone shadows to small particles following powdering.

V. "Board" means state board of registration of funeral directors and embalmers, as defined in RSA 325:2.

VI. "Bone shadows" means the remaining bone fragments following the resomation process and prior to powdering.

VII. "Casket" means a rigid container made of wood, metal, or other similar material, ornamented and lined with fabric, which is designed for the encasement of human remains.

VIII. "Change of ownership" means the change in the controlling interest of an established resomation facility.

IX. "Communicable disease" means communicable disease, as defined by RSA 141-C:2, VI.

X. "Delivery receipt form" means a form provided by a funeral establishment to a resomation facility authority to document the receipt of human remains by such authority for the purpose of resomation.

XI. "Dissolvable coffin" means a re-useable coffin cover that houses the rigid stainless steel basket which encases the human remains for placement within a resomator.

XII. "Funeral director" means funeral director as defined in RSA 325:1, VIII and licensed in accordance with RSA 325:14.

XIII. "Holding facility" means an area within a resomation facility, separate from public areas, designated for the retention of human remains prior to resomation.

XIV. "Human remains" means the body of a deceased person or a human body part, in any stage of decomposition and includes limbs or other

portions of human anatomy that are removed from a person or human remains for medical purposes during treatment, surgery, biopsy, autopsy, or medical research.

XV. "Leak proof pouch" means a plastic, vinyl, or similar material bag that is made specifically for the containment of human remains.

XVI. "Next-of-kin" means next-of-kin as defined in RSA 290:16, IV.

XVII. "Operator" means the individual responsible for the day-to-day operation of the resomation facility.

XVIII. "Owner" means the individual, partnership, or corporation with a controlling interest in the resomation facility.

XIX. "Permanent container" means a receptacle made of durable material for the long-term placement of resomated remains.

XX. "Powdering" means the process used to reduce bone shadows to unidentifiable particles/bio-ash.

XXI. "Resomated remains" means the residue of human remains recovered after resomation and the processing of such remains by powdering.

XXII. "Resomated remains container" means any container in which resomated remains can be placed in and sealed to avoid leakage or prevent entrance of foreign materials.

XXIII. "Resomated remains receipt form" means a form provided by a resomation facility authority to an authorizing agent or his or her representative that identifies resomated remains and the person authorized to receive such remains.

XXIV. "Resomation" means the technical process that uses high-temperature water-based alkali solution under a high pressure system to reduce human remains to bone shadows.

XXV. "Resomation facility" means a building or structure which contains a resomator and holding facility.

XXVI. "Resomation facility authority" means the legal entity subject to licensing by the board to maintain and operate a resomation facility and perform resomation.

XXVII. "Resomator" means the stainless steel pressure vessel within which a resomation takes place.

XXVIII. "Resomator operator" means a person who is responsible for the operation of the resomator and the resomation facility.

XXIX. "Stainless steel basket" means a rigid stainless steel basket lined with silk and a liquid proof starch based bio-plastic lining used to encase human remains for placement within a resomator for resomation.

XXX. "Suitable solid container" means a rigid container, which is designed for the encasement and disposition of human remains before resomation.

XXXI. "Temporary container" means a receptacle made of cardboard, plastic, or other similar material in which resomated remains are placed prior to the placement of such remains in an urn or other permanent container.

XXXII. "Urn" means a container used for placement of resomated remains.

XXXIII. "Violations against a decedent" means actions that desecrate or tamper with human remains or personal effects, lead to the misidentification of a decedent, or allow the commingling of resomated remains of more than one decedent.

325-B:2 Resomation Facility, License Required. A resomation facility shall not be established, operated, or maintained in this state except by a resomation facility authority licensed by the board under this chap-

ter. The board shall issue a license to a resomation facility authority that satisfies the requirements for licensure under this chapter. Human remains shall not be processed via resomation in this state except at a resomation facility operated by a resomation facility authority licensed under this chapter.

325-B:3 Building and Location Requirements.

I. A resomation facility shall conform to all building codes as defined by the city or town in which the resomation facility is to be constructed in addition to all environmental regulations.

II. A resomation facility may be constructed at any location consistent with applicable zoning and environmental regulations.

325-B:4 License; Application; Requirements; Fee. An applicant for an initial or renewal license as a resomation facility authority shall file a written application with the board. The application shall be accompanied by the license fee required under RSA 325-B:7 and a certificate confirming that the resomator operator has attended, prior to issuance of the license, a training course provided by the manufacturer of the resomator maintained and operated by the resomation facility authority and shall set forth the full name and address of the applicant, the address and location of the resomation facility, the name of the resomation facility operator, the name and address of the owner of the resomation facility, and additional information as required by the board, including evidence of the applicant's ability to comply with rules adopted under this chapter. The application shall include the applicant's social security number if the applicant is an individual. The social security number shall not be a public record and shall only be used for administrative purposes.

325-B:5 License; Expiration. Except as otherwise provided in this chapter, licenses issued pursuant to this chapter shall expire 3 years after the date of issuance. Licenses shall be issued only for the resomation facility authority named in the application and shall not be transferable or assignable.

325-B:6 Change in Location, Ownership, or Name.

I. A resomation facility authority desiring to relocate a resomator shall file a written application with the board at least 30 days prior to the designated date of such relocation. The application shall be accompanied by a fee as determined by the board in rules adopted under RSA 541-A.

II. A resomation facility authority desiring to change ownership of a resomation facility shall file a written application with the board at least 30 days prior to the designated date of such change. The application shall be accompanied by a fee as determined by the board in rules adopted under RSA 541-A.

III. A resomation facility authority desiring to change its name shall file a written application with the board at least 30 days prior to such change. The application shall be accompanied by a fee as determined in rules adopted under RSA 541-A.

325-B:7 Licensure; Fees.

I. The application for an initial or renewal license as a resomation facility authority shall include a fee determined in rules adopted under RSA 541-A.

II. If the license application is denied, the license fee shall be returned to the applicant, except that the board may retain an administrative fee and may retain the entire license fee if an inspection has been completed prior to such denial.

III. The board shall collect a fee for reinstatement of a license that has lapsed or has been suspended. The board shall collect a fee for a duplicate original license.

IV. The board shall collect a fee for a certified statement that a resomation facility authority is licensed in this state and a fee for verification that a resomation facility authority is licensed in this state.

V. All fees collected by the board under this chapter shall be remitted to the state treasurer for deposit in the general fund.

325-B:8 Inspection; Board; Duties; Authority for Appointments.

I. The board shall, at least once every 3 years, inspect or provide for the inspection of any resomation facility and operated by a resomation facility authority licensed under this chapter in such manner and at such times as provided in rules adopted by the board.

II. The board shall issue an inspection report and provide a copy of the report to the resomation authority within 10 working days after the completion of an inspection. The board shall review any findings of noncompliance contained in such report within 20 working days after such inspection.

III. If the board determines, after such review, that the evidence supports a finding of noncompliance by a resomation facility authority with any applicable provisions of this chapter or rules adopted under this chapter, the board may send a letter to the resomation facility authority requesting a statement of compliance. The letter shall include a description of each alleged violation, a request that the resomation facility authority submit a statement of compliance within 10 working days, and a notice that the board may take further action if the statement of compliance is not submitted. The statement of compliance shall indicate any actions by the resomation facility authority which have been or will be taken and the period of time estimated to be necessary to correct each alleged violation. If the resomation facility authority fails to submit such statement of compliance or fails to make a good faith effort to correct the alleged violations, the board may take further action as provided in this chapter.

IV.(a) The board may appoint technical advisors or other investigators to assist with any investigation or adjudication, and may, with the approval of the attorney general, appoint legal counsel for such purposes.

(b) To the extent the board lacks budgeted funds to conduct a significant investigation or adjudication, it may, with the approval of the attorney general, petition governor and council to receive funds not otherwise appropriated in order to retain professional advisors in the proceeding.

(c) If the governor and council approve the use of funds not otherwise appropriated, the governor is authorized to issue a warrant for the approved amount out of any moneys in the treasury not otherwise appropriated. The board shall then promptly increase its licensing fees to the extent necessary to repay the amount advanced to the general fund during the next fiscal year by means of a fee surcharge.

325-B:9 Complaints.

I. Any person may submit a complaint to the board and request investigation of an alleged violation of this chapter or rules adopted under this chapter. The board shall review all complaints and determine whether to conduct an investigation relating to such complaints.

II. A complaint submitted to the board under this section shall be confidential. A person submitting such complaint shall be immune from criminal or civil liability of any nature, whether direct or derivative, for submitting the complaint or for disclosure of documents, records, or other information to the board relating to such complaint.

325-B:10 Imminent Danger; Board Powers.

I. If the board determines that a resomation facility authority is operating a resomation facility so as to create an imminent danger of death or serious physical harm to persons employed at or in proximity to such resomation facility, the board may order the temporary suspension or temporary limitation of the license of the resomation facility authority and may order the temporary closure of the resomation facility pending further action by the board. A hearing shall be held by the board no later than 10 days after the date of such order. The board shall also simultaneously institute proceedings for revocation, suspension, or limitation of the license of the resomation facility authority.

II. A continuance of the hearing under paragraph I shall be granted by the board upon written request from the resomation facility authority. Such continuance shall not exceed 30 days.

III. A temporary suspension or temporary limitation order by the board under this section shall take effect when served upon the resomation facility authority and shall not exceed 90 days. If further action is not taken by the board within such period, the temporary suspension or temporary limitation shall expire.

325-B:11 Deny or Refuse to Renew License; Grounds. The board may deny or refuse to renew a license under this chapter or take disciplinary action against a resomation facility authority licensed under this chapter as provided in RSA 325-B:12 on any of the following grounds:

I. Violation of this chapter or rules adopted and pursuant to this chapter;

II. Conviction of any crime involving moral turpitude;

III. Conviction of a misdemeanor or felony under state law, federal law, or the law of another jurisdiction which, if committed within this state, would have constituted a misdemeanor or felony and which has a rational connection with the fitness or capacity of the resomation facility authority to operate a resomation facility;

IV. Conviction of a violation pursuant to RSA 325-B:15;

V. Obtaining a license as a resomation facility authority by false representation or fraud;

VI. Misrepresentation or fraud in the operation of a resomation facility; or

VII. Failure to allow access by an agent or employee of the board to a resomation facility operated by the resomation facility authority for the purposes of inspection, investigation, or other information collection activities necessary to carry out the duties of the board.

325-B:12 Disciplinary Actions.

I. The board may impose any one or more of the following types of disciplinary action against a resomation facility authority licensed under this chapter:

(a) A fine not to exceed \$20,000 per violation;

(b) A limitation on the license and upon the right of the resomation facility authority to operate a resomation facility to the extent, scope, or type of operation, for such time, and under such conditions as the board finds necessary and proper;

(c) Placement of the licensee on probation for a period not to exceed 2 years during which the resomation facility may continue to operate under terms and conditions fixed by the order of probation;

(d) Suspension of the license for a period not to exceed 2 years during which the resomation facility may not operate; and

(e) Revocation and permanent termination of the license.

II. Any fine imposed and unpaid under this chapter shall constitute a debt to the state of New Hampshire which may be collected in the man-

ner of a lien foreclosure or sued for and recovered in any proper form of action in the name of the state in the superior court of the county in which the resomation facility is located. The board shall, within 30 days after receipt, remit any such fines to the state treasurer for deposit in the general fund.

325-B:13 Appeal. Any party to a decision of the board under this chapter may appeal such decision in accordance with RSA 541.

325-B:14 License Reinstatement or Relicensure.

I. If the license of a resomation facility authority has lapsed for nonpayment of fees, such license shall be eligible for reinstatement at any time upon application to the board and payment of the applicable fee as provided in RSA 325-B:7.

II. If the license of a resomation facility authority has been placed on probation, such license shall be eligible for reinstatement at the end of the period of probation upon successful completion of an inspection if the board determines an inspection is warranted.

III. If the license of a resomation facility authority has been suspended, such license shall be eligible for reinstatement at the end of the period of suspension upon successful completion of an inspection and payment of the applicable fee as provided in RSA 325-B:7.

IV. If the license of a resomation facility authority has been suspended, such license may be reinstated by the board prior to the completion of the term of suspension upon petition by the licensee. After reviewing such petition and any material submitted by the licensee with such petition, the board may order an inspection or investigation of the licensee. Based on such review and such inspection or investigation, if any, the board shall grant full reinstatement of the license, modify the suspension, or deny the petition for reinstatement. The board's decision shall become final 30 days after mailing the decision to the licensee unless the licensee requests a hearing within such period. Any requested hearing shall be held according to rules of the board.

V. If the license of a resomation facility authority has been revoked, such resomation facility authority shall not be eligible for relicensure until 5 years after the date of such revocation. A reapplication for an initial license may be made by the resomation facility authority at the end of such 5-year period.

325-B:15 Acts Prohibited; Penalty.

I. Maintaining or operating a resomation facility in violation of this chapter or any rules of the board is a public nuisance and may be abated as a nuisance as provided by law.

II. It shall be a felony to establish, operate, or maintain a resomation facility subject to this chapter without being licensed as a resomation facility authority under this chapter, to hold oneself out to the public as a resomation facility authority without being licensed, or to perform a resomation without a resomation authorization form signed by the authorizing agent and a completed burial transit permit for resomation, and a medical examiner's certificate of resomation.

III. Signing a resomation authorization form with actual knowledge that the form contains false, incorrect, or misleading information is a felony.

IV. A violation of any other provision of this chapter is a misdemeanor.

325-B:16 Injunctions. The board may maintain an action in the name of the state for an injunction against any person for establishing, operating, or maintaining a resomation facility without first obtaining a license

as a resomation facility authority under this chapter. In charging any defendant in a complaint in such action, it shall be sufficient to charge that such defendant did, upon a certain day and in a certain county, establish, operate, or maintain a resomation facility without obtaining a license as a resomation facility authority under this chapter, without alleging any further or more particular facts concerning the same.

325-B:17 Right to Authorize Resomation. The right to authorize the resomation of human remains and the final disposition of the resomated remains, except in the case of a minor and unless other directions have been given by the decedent in the form of a testamentary disposition or a pre-need contract, vests pursuant to RSA 290.

325-B:18 Medical Examiner's Certificate.

I. The body of a deceased person shall not be resomated within 48 hours after his or her death unless he or she died of a contagious or infectious disease. If the death occurred within the state, the body shall not be resomated by the resomation facility authority until the resomation facility authority has received the burial transit permit for resomation required by law, and a certificate from a medical examiner or deputy medical examiner that he or she has viewed the body and made personal inquiry into the cause and manner of death, and is of the opinion that no further examination or judicial inquiry concerning the same is necessary. If the death occurred within the state but the body is being transferred out of state for resomation, the transfer shall not occur until the medical examiner has conducted such a view and inquiry and has issued a certificate. If the death occurs outside the state, the reception and resomation of the body of a deceased person shall be governed by rules adopted by the board after consultation with the chief medical examiner.

II. The resomation facility authority shall forward a copy of the resomation certificate to the office of the chief medical examiner, accompanied by a \$60 fee. The fee shall be deposited in the medico-legal investigative fund established pursuant to RSA 611-B:28.

325-B:19 Resomation Facility Authority.

I. A resomation facility authority, upon receiving human remains, shall sign a delivery receipt form and shall hold the human remains, prior to resomation, as provided in this section. The form shall include the name of the deceased, the time and date of delivery of such remains, and the signatures of the owner of the resomation facility or his or her representative and the funeral director or his or her representative, or the next-of-kin or designated agent as provided in RSA 290.

II. If a resomation facility authority is unable to resomate the human remains immediately upon taking receipt thereof, the resomation facility authority shall place the human remains in a holding facility. A holding facility shall be designed and constructed to comply with all applicable public health laws, provide for the health and safety of persons employed at such facility, and prevent any unauthorized access to such facility.

III. A resomation facility authority may refuse to accept for holding an alternative container or casket from which there is any evidence of leakage of the body fluids from the human remains in the container.

IV. If human remains received by the resomation facility authority are not embalmed, such remains shall be held no longer than 24 hours from the time of death at the resomation facility unless the human remains are placed within a refrigerated facility in accordance with the laws of this state.

325-B:20 Resomation Facility Operation; Limitations.

I. No person shall be permitted in a resomation facility, unless authorized by the resomation facility authority, while any human remains are in the resomation facility awaiting resomation, being resomated, or being removed from the resomator.

II. The human remains of more than one person shall not be simultaneously resomated within the same resomator unless the resomation facility authority has received specific written authorization from the authorizing agent for the human remains to be so resomated.

325-B:21 Resomation Facility Authority; Requirements.

I. A resomation facility authority shall not accept human remains for resomation without a proper label placed on the exterior of the alternative container or casket indicating the name of the deceased and the name and location of the funeral establishment, or the name of the next-of-kin or designated agent as provided in RSA 290.

II. No resomation facility authority shall make or enforce any rules requiring that human remains be placed in a casket before resomation. No resomation facility authority shall refuse to accept human remains for resomation if the human remains are received in a casket.

III. No resomation facility authority shall accept human remains for resomation unless the human remains are delivered to the resomation facility authority in an alternative container or casket or delivered to the resomation facility authority's holding facility to be placed in an alternative container or casket. Human remains delivered to a resomation facility in an alternative container or casket, shall not be removed from the temporary container or casket while being held awaiting resomation. Human remains shall not be removed from the alternative container or casket for resomation without the expressed written consent of the authorizing agent as stipulated on the authorization for resomation form required. A resomation facility authority may refuse an alternative container or a casket or container that is not labeled as required under paragraph I.

IV. An alternative container shall:

(a) Be able to be closed to provide for complete encasement of the human remains;

(b) Be resistant to leakage or spillage;

(c) Be rigid enough for easy handling; and

(d) Provide protection for the health and safety of persons handling such container.

V. No resomation facility authority shall accept unembalmed human remains for resomation unless the human remains are delivered to the resomation facility authority in a leak proof pouch. If the unembalmed human remains are noted to have died from an infectious, contagious, or communicable disease, the human remains must be received by the resomation facility authority within 2 leak proof pouches.

325-B:22 Resomation Authorization Form.

I. A resomation facility authority shall not resomate human remains until it has received a resomation authorization form as provided in paragraph II, a completed and executed burial transit permit for resomation as required by law or the appropriate resomation permit from the state from which the human remains were delivered, indicating that the human remains are to be resomated, and a delivery receipt form.

II. A resomation authorization form shall be signed by the authorizing agent and shall include, but not be limited to, the following information:

- (a) The name of the deceased;
- (b) Date and place of death;
- (c) The identity of the funeral home, funeral director, next of kin or agent responsible for the delivery of the human remains to the resomation facility for resomation;

- (d) Notification that the death did or did not occur from a disease declared by the board to be infectious, contagious, communicable, or dangerous to the public health;

- (e) The name of the authorizing agent and the relationship between the authorizing agent and the deceased;

- (f) Authorization by the authorizing agent for the resomation facility authority to resomate the human remains;

- (g) A representation that the authorizing agent is aware of no objection to the human remains being resomated by any person who has a right to control the disposition of the human remains;

- (h) A representation that the human remains do not contain any material, implants, or conditions that may be potentially hazardous to equipment or persons performing the resomation;

- (i) Acknowledgement by way of initials of the authorizing agent to the resomation facility authority beside the specific statements outlining the requirements and authorization to remove the human remains from the temporary container, casket or same, in addition to the leak-proof pouch, prior to placement of human remains within the dissolvable casket for resomation.

- (j) Acknowledgement by way of initials of the authorizing agent to the resomation facility authority beside the specific statement acknowledging the fact, as a requirement of the resomation process, all personal effects including all clothing must be removed from the human remains, unless clothed in acceptable clothing for resomation, prior to placing the human remains within the stainless steel basket for the completion of the resomation process.

- (k) Acknowledgement from the authorizing agent to resomation facility authority of the disposition of the temporary container, casket or same, from which the human remains were removed from prior to resomation.

- (l) The name of the person authorized to claim the resomated remains from the resomation facility authority; and

- (m) The intended disposition of the resomated remains.

III. A resomation facility authority shall retain, for at least 7 years after the resomation, in printed or electronic format with suitable backup, copies of the resomation authorization form, the burial transit permit for resomation, the resomated remains receipt form, delivery receipt form, and any other records required under this chapter.

325-B:23 Signature.

I. Any person signing a resomation authorization form shall be deemed to warrant the truthfulness of any facts set forth on such form, including the identity of the deceased whose remains are sought to be resomated and the authority of the person to authorize such resomation. Any person signing a resomation authorization form is personally liable for all damages resulting from false, incorrect, or misleading information contained on such form.

II. A resomation facility authority may resomate human remains upon the receipt of a resomation authorization form signed by an authorizing agent, a completed and executed burial transit permit for resomation as required by law and the required medical examiner certificate of resomation.

325-B:24 Potentially Hazardous Conditions.

I. No human remains shall be resomated with the knowledge that the human remains contain a pacemaker or defibrillator or other potentially hazardous implant or condition. The authorizing agent shall take all necessary steps to ensure that any such hazardous implant or condition is removed or corrected prior to resomation. If an authorizing agent informs the funeral director and the resomation facility authority on the resomation authorization form of the presence of such potentially hazardous implant or condition in the human remains, the funeral director shall ensure that all necessary steps have been taken to remove or correct the implant or condition before delivering the human remains to the resomation facility. A funeral director who knowingly fails to ensure the removal or correction of the hazardous implant or condition prior to delivery and who knowingly delivers such human remains shall be liable for any damages resulting from such failure. If human remains with hazardous implants or conditions are in the custody of a resomation facility authority, such authority shall have the hazardous implants or conditions removed or corrected by a licensed funeral director and embalmer or a licensed embalmer at a funeral establishment within an embalming preparation room, or at a medical facility by appropriate medical personnel, or at the resomation facility by an assistant deputy medical examiner of the department of justice.

II. No human remains shall be resomated with the knowledge that the human remains contain jewelry or other valuables unless authorized by the authorizing agent. The authorizing agent shall take all necessary steps to ensure that any jewelry or other valuables are removed prior to resomation. If the authorizing agent informs the funeral director and the resomation facility authority on the resomation authorization form of the presence of jewelry or other valuables on the human remains, the funeral director shall ensure that all necessary steps have been taken to remove the jewelry or other valuables before delivering the human remains to the resomation facility. A funeral director who knowingly fails to ensure the removal of the jewelry or other valuables prior to delivery and who knowingly delivers such human remains shall be liable for any damages resulting from such failure. If human remains with jewelry or other valuables are in the custody of a resomation facility authority, such authority shall provide for the removal of such jewelry or other valuables by a licensed funeral director and embalmer or his or her agent.

325-B:25 Disputes.

I. If a resomation facility authority or funeral establishment is aware of any dispute concerning the resomation of human remains, or has a reasonable basis to believe that such a dispute exists or to question any of the representations made by the authorizing agent with respect to such remains, until the resomation facility authority receives a court order that a dispute with respect to such remains has been settled, the resomation facility authority or funeral establishment may refuse to accept such human remains for resomation or to perform a resomation of such remains.

II. If a resomation facility authority or funeral establishment is aware of any dispute concerning the release or disposition of resomated remains, the resomation facility authority or funeral establishment may refuse to release resomated remains until the dispute has been resolved or the resomation facility authority or funeral establishment has been provided with a court order authorizing the release or disposition of the resomated remains.

325-B:26 Resomated Remains; How Treated.

I. To the extent possible, upon completion of the resomation, all of the recoverable residue of the resomation shall be removed from the resomator and any foreign matter or anything other than bone shadow shall be removed from such residue and shall be disposed of by the resomation facility authority. The remaining bone shadow shall be powdered to reduce the shadows to unidentifiable particles/bio-ash. This paragraph shall not apply when the commingling of human remains during resomation is otherwise authorized by law.

II. The resomated remains with proper identification shall be placed in a temporary container or permanent container selected or provided by the authorizing agent. The resomated remains shall not be contaminated with any other object unless specific written authorization to the contrary has been received from the authorizing agent.

III. If the entirety of the resomated remains will not fit within a temporary container or permanent container, the remainder of such remains shall be returned to the authorizing agent or his or her representative in a separate container with proper identification.

IV. If the resomated remains are to be shipped, the temporary container or permanent container shall be packed securely in a suitable shipping container that complies with the requirements of the shipper. Unless otherwise directed in writing by the authorizing agent, resomated remains shall be shipped only by a method which includes an internal tracking system and which provides a receipt signed by the person accepting delivery of such remains.

325-B:27 Resomated Remains; Final Disposition.

I. The delivery of the resomated remains to the authorizing agent or his or her representative shall constitute final disposition. If, after a period of 60 days after the date of resomation, the authorizing agent or his or her representative has not directed or otherwise arranged for the final disposition of the resomated remains or claimed the resomated remains for final disposition as provided in this section, the resomation facility authority or the funeral establishment in possession of the resomated remains may dispose of the resomated remains after making a reasonable attempt to contact the authorizing agent or his or her representative. This method of disposition may be used by any resomation facility authority or funeral establishment to dispose of all resomated remains in the possession of a resomation facility authority or funeral establishment on or after the effective date of this chapter.

II. Resomated remains shall be delivered or released by the resomation facility authority to the representative specified by the authorizing agent on the resomation authorization form. The owner of the resomation facility authority or his or her representative and the party receiving the resomated remains shall sign a resomated remains receipt form. The form shall include the name of the deceased, the date, time, and place of receipt of the resomated remains, and the signatures of the owner of the resomation facility or his or her representative and the authorizing agent or his or her representative. If the resomated remains are shipped, a form used by the shipper may be used in lieu of a completed resomated remains receipt form if the shipper's form contains the information required for a resomated remains receipt form. Both the party delivering such remains and the party receiving such remains shall retain a copy of the resomated remains receipt form or shipper's form. Upon delivery, the resomated remains may be further transported within this state in any manner without a permit.

325-B:28 Rulemaking. The board shall adopt rules, pursuant to RSA 541-A relative to:

I. Procedures for licensure of resomation facility authorities.

II. Establishing all required fees.

III. The content of all forms.

IV. Conditions under which human remains of persons whose death was caused by a disease declared by the board to be infectious, contagious, communicable, or dangerous to the public health may be transported in this state to a resomation facility for the purpose of resomation. The board shall consult with the chief medical examiner on rules adopted under this paragraph.

V. Minimum sanitation standards for all resomation facilities.

VI. Inspection procedures for resomation facilities as required under RSA 325-B:8.

325-B:29 Resomation Facility Authority; Bylaws. A resomation facility authority may enact reasonable bylaws not inconsistent with this chapter for the management and operation of a resomation facility operated by such authority. Nothing in this section shall prevent a resomation facility authority from enacting bylaws which contain more stringent requirements than those provided in this chapter.

2 Assistant Deputy Medical Examiner Accounts. Amend RSA 611-B:27, I to read as follows:

I. Assistant deputy medical examiners shall be paid at the following rates: telephone consultations—\$25; death investigations involving an external examination of the body—[~~\$125~~] **\$140**, plus mileage at the state rate; pre-cremation examinations conducted pursuant to RSA 325-A:18—\$50; ***pre-resomation examinations conducted pursuant to RSA 325-B:18—\$50.***

3 Repeal. RSA 325-A:30, II, relative to disposal of human remains through a reductive process utilizing alkaline hydrolysis.

4 Effective Date. This act shall take effect January 1, 2009.

MOTION TO TABLE

Sen. Fuller Clark moved to have SB 332-FN laid on the table.

Motion adopted.

LAID ON THE TABLE

SB 332-FN, relative to resomation of human remains.

SB 334-FN, relative to undue influence on real estate appraisals and relative to the quorum of the real estate appraiser's board. Executive Departments and Administration Committee. Ought to Pass with Amendment, Vote 2-0. Senator Downing for the committee.

Senate Executive Departments and Administration

February 8, 2008

2008-0466s

10/05

Amendment to SB 334-FN

Amend the bill by replacing section 4 with the following:

4 Effective Date. This act shall take effect upon its passage.

SENATOR DOWNING: Thank you, Madam President. I move Senate Bill 334-FN ought to pass with amendment. This bill prohibits persons from engaging in undue influence on a real-estate appraiser concerning a mortgage loan. In addition, the bill reduces the quorum for the Real

Estate Appraisers Board. It gives understanding that no one involved in a real-estate transaction, whether they be the seller, buyer, retailer or lender, should ever put undue influence on an appraiser. This piece of legislation clearly provides consequences if there's a violation. Please join the ED&A Committee in ought to pass with amendment. Thank you.

MOTION TO TABLE

Sen. Burling moved to have SB 334-FN laid on the table.

Motion adopted.

LAID ON THE TABLE

SB 334-FN, relative to undue influence on real estate appraisals and relative to the quorum of the real estate appraiser's board.

SB 393, allowing dental hygienists to engage in independent practice. Executive Departments and Administration Committee. Inexpedient to Legislate, Vote 3-2. Senator Burling for the committee.

SENATOR BURLING: Thank you, Madam President. I move Senate Bill 393-FN [sic] inexpedient to legislate. The committee was unanimous in its view that access to dental care is a critical issue here in New Hampshire. The majority of the Committee could not find that the solution offered in this bill, the creation of a new profession of an independent hygienist, offered a solution to the problem we face. Hygienists are essential parts of a dental team practice currently used as the model here in New Hampshire. The Committee majority believes that the multidiscipline team approach is necessary to provide comprehensive care for the treatment of a dental patient. The Committee also heard testimony that the two states that have allowed independent hygienist practice have seen some failure to provide for the safeguards of patients. The majority of the Committee, having heard all of the evidence that was presented to it, including a great deal of testimony from the Dental Society, could not find that the solution offered in this bill is the best way to gain access to additional dental care for the people of New Hampshire. And I would say, by additional footnote, while the bill that came to us we thought was going to talk about providing independent offices with, you know, dental hygienist practices in a model that would be familiar to all of us, the witness who actually showed up in favor of the bill began to talk in glowing terms about dental hygienists in Wal-Mart. And we could not, as a majority, figure out how to make that work. I should also say there was no testimony how the capital necessary to create these dental hygienist offices could be brought together to make it work. With all of that, we ask that you support the majority of the Committee and find Senate Bill 393-FN [sic] inexpedient to legislate. Thank you, Madam President.

Recess/Out of Recess.

(The Chair recognized Sen. Fuller Clark to speak to SB 393.)

MOTION TO TABLE

Sen. Fuller Clark moved to have SB 393 laid on the table.

Motion adopted.

LAID ON THE TABLE

SB 393, allowing dental hygienists to engage in independent practice.

SB 324-FN, consolidating all substance abuse services in the office of alcohol and drug abuse prevention within the department of health and human services. Finance Committee. Ought to Pass, Vote 4-0. Senator Sgambati for the committee.

SENATOR SGAMBATI: Thank you, Madam President. I move Senate Bill 324 ought to pass. The bill requires the Commissioner of the Department of Health and Human Services to establish a single office or division within the Department for the administration of treatment/prevention services programs and policies for substance abuse. It will consolidate the staff that currently are spread over three to five different locations. It also clarifies a relationship between the Department and the Governor's Commission on Drug and Alcohol Treatment and Prevention. It does not require any additional money. It will use existing Department resources to effect the re-organization. So the Finance Committee asks for your support for a motion of ought to pass. Thank you, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on SB 324.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 442-FN, requiring that the proceeds of fees for motions to appear in court pro hac vice be paid into the law library revolving fund. Finance Committee. Ought to Pass, Vote 4-0. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you, Madam President. I move Senate Bill 442 ought to pass. This bill sets up a nonlapsing dedicated fund for the law library. The proceeds from fees for motions to appear in court pro hac vice will be paid into this fund. This fee, \$225, just went into effect on the first of January 2008, so there will be no loss to the General Fund. This money will enable the law library to expand their current hours of operation to stay open one night a week. This will allow them to better serve the pro se litigants who utilize the law library resources. If enough revenue is generated from this fee, the law library will be able to offer training to local libraries so that they, too, can better assist pro se litigants who go to them for help. The Finance Committee asks your support of the motion ought to pass. Thank you, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on SB 442-FN.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 320-FN, relative to unauthorized payment of public assistance. Health and Human Services Committee. Inexpedient to Legislate, Vote 5-0. Senator Sgambati for the committee.

SENATOR SGAMBATI: Thank you, Madam President. I move Senate Bill 320 inexpedient to legislate. This bill permits the State to recover payments of public assistance regardless of the reason for that overpayment. Most overpayments are, in fact, due to agency error. The Committee feels that those receiving assistance should not be penalized from an agency oversight. In fact, the calculation of benefits is so complex that a recipient is not likely to understand that their check is, in fact, error. The overpayments have averaged, over the past five years, \$11,000 a year. The cost of recovering these funds for the State would not equal, by any chance, the cost of – the cost of recovering. So that, in fact, we will spend more money trying to get \$11,000 a year for an error that is unknown to the client. Fraud is handled in an entirely different manner.

These are agency errors, and the checks and balances within our agencies should be rather improved rather than penalizing those who live in poverty. So we ask you to join the Committee voting this bill inexpedient to legislate. Thank you, Madam President.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on SB 320-FN.

Motion of Inexpedient to Legislate adopted.

SB 390, establishing a suicide prevention council. Health and Human Services Committee. Ought to Pass with Amendment, Vote 5-0. Senator Sgambati for the committee.

Sen. Sgambati, Dist. 4

February 5, 2008

2008-0405s

01/04

Amendment to SB 390

Amend RSA 126-R:3, I as inserted by section 2 of the bill by inserting after subparagraph (u) the following new subparagraph:

(v) A physician, appointed by the New Hampshire Medical Society.

Amend RSA 126-R:3, II(a) as inserted by section 2 of the bill by replacing it with the following:

II.(a) The term of office for each member appointed under subparagraphs I(h)-(v) shall be 2 years, or until a successor is appointed and qualified in the case of a vacancy. The term of office for all other members shall be coterminous with the term of office for the position that qualifies that member to serve on the advisory council. A vacancy shall be filled in the same manner, but only for the unexpired term.

SENATOR SGAMBATI: Thank you, Madam President. I move Senate Bill 390 ought to pass with amendment. The bill establishes a suicide prevention council to oversee the implementation of New Hampshire's suicide prevention plan. The Committee heard great testimony in favor of this bill as suicide is the second leading cause of death among people ages 10 to 34, and the ninth leading cause of death for all ages. In fact, most of it is related to undiagnosed mental illnesses and is almost always preventable. The commission will help us move forward. The state plan that I mentioned, there's been a great deal of groundwork laid, and this is the next step that I believe is important for us to deal with this preventable plan that will not require many new resources but much more education. So we ask you to join us in voting this Senate Bill 390 ought to pass with amendment. And just as a clarification, we will be bringing in a floor amendment as well, once the vote is complete. There have been two instances where people have asked to be included on this, which I think is an important thing, and to increase the numbers of representations. So I would ask you to vote this bill ought to pass with amendment and then we'll bring in a floor amendment.

The question is on the adoption of Committee Amendment 0405s.

Committee Amendment 0405s adopted.

(The Chair recognized Sen. Gatsas for question of Sen. Sgambati.)

SENATOR GATSAS: Question, Madam President. I assume that Sen. Sgambati brought this commission forward so she would – if I can ask her a question. Senator, seeing that you brought this legislation forward, are you the Senate member that's going to sit on this commission?

SENATOR SGAMBATI: I think that's to be determined.

SENATOR GATSAS: Okay.

Sen. Sgambati offered a floor amendment.

Sen. Sgambati, Dist. 4

February 12, 2008

2008-0557s

01/04

Floor Amendment to SB 390

Amend RSA 126-R:3, I(c) as inserted by section 2 of the bill by replacing it with the following:

(c) The commissioner of the department of health and human services, or designee, and one additional representative of the department, appointed by the commissioner.

SENATOR SGAMBATI: Thank you, Madam Chair. I would ask that the Senate consider Amendment 00 – 0557s.

PRESIDENT LARSEN: Floor Amendment 0557s has been proposed. You may speak to that as it's being distributed.

SENATOR SGAMBATI: It is a very simple amendment. It adds an additional member of Health and Human Services. Their involvement in suicide prevention spans many different departments, or divisions within the Department. Safety has two. This was originally intended to have two representatives from HHS and it was an oversight that caused it not to be at its accurate number. So I would ask that we entertain this amendment and vote it ought to pass. Thank you, Madam President.

The question is on the adoption of Floor Amendment 0557s.

Floor Amendment 0557s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 390.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 395, establishing a commission to review New Hampshire's statutes on human immunodeficiency virus education, prevention, and control. Health and Human Services Committee. Ought to Pass with Amendment, Vote 4-0. Senator Estabrook for the committee.

Sen. Sgambati, Dist. 4

February 5, 2008

2008-0404s

01/04

Amendment to SB 395

Amend paragraph I of section 2 of the bill by replacing it with the following:

I. The members of the commission shall be as follows:

(a) One member of the senate, appointed by the president of the senate.

(b) Two members of the house of representatives, appointed by the speaker of the house of representatives.

(c) The commissioner of the department of health and human services, or designee.

(d) The commissioner of the department of education, or designee.

(e) The director of the division of public health services, department of health and human services, or designee.

(f) One representative of the New Hampshire Hospital Association, appointed by such association.

(g) One representative of the New Hampshire Medical Society, appointed by such society.

(h) A representative of an AIDS service organization, appointed by the governor.

SENATOR ESTABROOK: Thank you, Madam President. I move SB 395 ought to pass with amendment. This bill calls for a commission to review and update RSA 141-F relative to HIV education prevention and control. RSA 141-F was enacted in 1988, early in the HIV epidemic in an environment that is very different from the situation we see today. Providers in the state have shared with us that parts of the law are difficult to interpret, and in some cases the law creates barriers to testing and/or managing the care of clients appropriately. The committee will deliberate, for example, whether the CDC recommendation that all pregnant women be tested should be adopted in New Hampshire. This routine practice has the promise of significantly reducing an infant's risk of contracting HIV/AIDS from his or her mother. The amendment reduces the Senate participation to one Senator and adds the Department of Education, who requested to have seat on the commission. The Health and Human Services Committee asks your support for ought to pass with amendment on SB 395. Thank you, Madam President.

**The question is on the adoption of Committee Amendment 0404s.
Committee Amendment 0404s adopted.**

The question is on the adoption of Ought to Pass as Amended on SB 395.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 427, requiring hospitals to report on their standards and criteria for organ donations and transplants. Health and Human Services Committee. Inexpedient to Legislate, Vote 5-1. Senator Sgambati for the committee.

MOTION TO TABLE

Sen. Sgambati moved to have SB 427 laid on the table.

The question is on the motion to table.

A roll call was requested by Sen. Kenney, seconded by Sen. Burling.

The following Senators voted Yes: Reynolds, Sgambati, Burling, Cilley, Janeway, Kelly, Bragdon, Gottesman, Foster, Larsen, DeVries, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Kenney, Odell, Roberge, Clegg, Gatsas, Barnes, Letourneau.

Yeas: 16 - Nays: 8

Motion adopted.

LAIID ON THE TABLE

SB 427, requiring hospitals to report on their standards and criteria for organ donations and transplants.

SB 454, relative to certain changes to the controlled drug act. Health and Human Services Committee. Ought to Pass with Amendment, Vote 6-0. Senator Kenney for the committee.

Sen. Kenney, Dist. 3

February 7, 2008

2008-0453s

01/09

Amendment to SB 454

Amend the bill by replacing section 1 with the following:

1 Controlled Drug Act; Sale by Pharmacists . Amend RSA 318-B:9, IV to read as follows:

IV. No prescription shall be filled for more than a 34-day supply [~~or 100 dosage units, whichever is less,~~] upon any single filling for controlled drugs of schedules II or III; provided, however, that with regard to amphetamines and methylphenidate hydrochloride, a prescription may be filled for up to a 60-day supply if either such prescription specifies it is being used for the treatment of attention deficit disorder, attention deficit disorder with hyperactivity, or narcolepsy.

2008-0453s

AMENDED ANALYSIS

This bill deletes the prohibition that prescriptions shall not be filled for more than 100 dosage units under the controlled drug act.

SENATOR KENNEY: Thank you, Madam President. I finally get to speak. Thank you. I move Senate Bill 454-FN [sic] ought to pass with amendment. Senate Bill 454-FN [sic] repeals the requirement that prescriptions shall not be filled for more than a 34-day supply under the Controlled Drug Act. This bill is intended for patients who live with constant pain and discomfort. Currently physicians are not allowed to prescribe controlled substances scheduled two or three for more than 34 days or a 100-unit supply, regardless of the medical condition of the patient. This bill allows for a physician to prescribe the necessary amount of prescription drugs necessary for managing the chronic symptoms of their patients. This bill also allows for the patients to have an emergency supply of their prescribed medication if by some reason they were unable to get to the pharmacy to refill their prescription for an extended period for time, so they would not have to go through the pain and discomfort they would suffer. Senate Bill 454-FN [sic] enables physicians to perform their job, which is to look out for the best interest of their patient and to ensure their comfort at all times, even if that includes issuing more than a normal amount of medication to ease their pain and discomfort. Cancer patients are not done with the effects of cancer once the clinical therapy has removed the cancer. The effects of treatment can last for months, years, and even the rest of the survivor's life. The most common long-term effect of cancer treatment is chronic pain. The management of this chronic pain is often the way of life for the survivors, particularly those that will eventually succumb to the disease. Under the current Controlled Drug Act, there are barriers between the physician and the patient, and the physician's ability to manage the pain or discomfort of their patient. This bill allows for the flexibility to treat patients in great pain as each individual needs and levels of discomfort are different from the next patient. Please join the Health and Human Services Committee in voting Senate Bill 454-FN [sic] ought to pass with amendment. Thank you, Madam President.

The question is on the adoption of Committee Amendment 0453s. Committee Amendment 0453s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 454.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 464, relative to the number of children in a licensed foster home. Health and Human Services Committee. Ought to Pass with Amendment, Vote 6-0. Senator Fuller Clark for the committee.

Sen. Sgambati, Dist. 4

February 8, 2008

2008-0484s

05/04

Amendment to SB 464

Amend the bill by replacing section 1 with the following:

1 Foster Family Home. Amend RSA 170-E:25, II(a)(2) to read as follows:

(2) If the limit of 6 children under subparagraph (a)(1) is reached, the foster family is willing and able *to take another child or* to take a sibling or a group of siblings of a child already in their care, and the department has concluded that the foster family is able to provide for the safety, permanency, and well-being of the child or children, the department may, notwithstanding the limitations of subparagraph (a)(1), *provide a waiver to* place the *child*, sibling, or group of siblings in the foster family home.

SENATOR FULLER CLARK: Thank you very much, Madam President. I move Senate Bill 464 ought to pass with amendment. Senate Bill 464 would permit a licensed foster family home with six children to take an additional child, or to take a sibling or a group of siblings of a child already in their care. Rather than alter the statute of limitation, the amendment creates a waiver process for the Department to allow more than six children in a foster family if the Department concludes that the family asking for the waiver is able to provide for the safety, permanency and well-being of such children. The Health and Human Services Committee recommends Senate Bill 464 ought to pass with amendment, and asks your support. Thank you very much, Madam President.

The question is on the adoption of Committee Amendment 0484s. Committee Amendment 0484s adopted.

The question is on the adoption Ought to Pass as Amended on SB 464.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

Recess/Out of Recess.

SJR 1, prohibiting the department of health and human services from adopting proposed administrative rule He-P 1906.02. Health and Human Services Committee. Ought to Pass, Vote 4-0. Senator Fuller Clark for the committee.

SENATOR FULLER CLARK: Thank you very much, Madam President. I move Senate Joint Resolution ought to pass, SJR 1, that prohibits the Department of Health and Human Services from adopting proposed Administrative Rule He-P 1906.02, ought to pass. It's important to under-

stand that this bill was requested by a unanimous vote of bipartisan JLCAR. And it was introduced in order to solve the problem of who has the authority of jurisdiction to enforce the smoking ban that was passed last year. Currently, there is no clear designee to enforce the smoking ban, and there's also no set designee to enforce the administrative fines that are imposed for violating the ban. More formal legislation will be coming before this body which will clarify in statute these concerns. Please join the Health and Human Services Committee in voting SJR 1 ought to pass. Thank you very much, Madam President.

(The Chair recognized Sen. Burling to speak.)

SENATOR BURLING: Thank you, Madam President. I would just like to say that my colleague has got it exactly right. The membership of the JLCAR Committee adopted a model of going forward. This resolution is a critical part of that. What's really important for us to know is what's in the bill that will be forthcoming under the sponsorship of Sen. Gottesman. And if I may yield to him, he may be able to tell us what's in the bill that he's introduced. But this is part of the way we do business at JLCAR to try to get the rules straightened out.

(The Chair recognized Sen. Gottesman to speak.)

SENATOR GOTTESMAN: Thank you, Madam President. JLCAR's a world that I do not understand. And I've tried not to, but I'm learning. (Laughter) I'm learning. So, you've heard what the others had to say and it's all correct. The way this works is when the rules are submitted, all rules are accepted except for rules that fall under this kind of category. So it says that this particular rule cannot be enforced. I'm looking because Will Craig went to get the legislation that I'm proposing. So all other rules to enforce the smoking ban apply. Unbeknownst to anyone, and at no one's request, the JLCAR attorney, who I didn't know existed, decided to do a review and interpret the law and figure out who was supposed to enforce the civil penalties under the smoking ban. And this goes back not to what we passed, but the law as it existed before we passed last year's legislation. No one had ever brought it up before. So the question was, is it a criminal enforcement or is it a civil enforcement? And they felt that it was a criminal enforcement. The Attorney General's Office was not particularly thrilled about enforcing violations of the smoking law. So, and HHS is, and had always anticipated doing so. So the legislation is necessary. And I have it. It doesn't have a bill number. There is a number on it, 082902.0. And it says, "This bill establishes administrative fines for persons violating the indoor smoking act." And it lays out procedures by which HHS can enforce those administrative fines. And I brought that in through Rules, so it's pretty new. Sen. Foster is sitting here, he's going to sign that bill and assign it to a committee. So this is procedural, and I would ask that you just follow through and approve it. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on SJR 1.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 323-FN, relative to terms of release and notice of hearings in the parole of prisoners. Judiciary Committee. Ought to Pass, Vote 5-0. Senator Clegg for the committee.

MOTION TO TABLE

Sen. Clegg moved to have SB 323-FN laid on the table.

Motion adopted.

LAID ON THE TABLE

SB 323-FN, relative to terms of release and notice of hearings in the parole of prisoners.

SB 399, permitting annulment of certain criminal records in the supreme court. Judiciary Committee. Ought to Pass, Vote 5-0. Senator Gottesman for the committee.

SENATOR GOTTESMAN: Thank you, Madam President. I move Senate Bill 399 ought to pass. This legislation permits the annulment of certain criminal records in the Supreme Court and was requested by the Supreme Court. However, if the opinions have already been published in the New Hampshire Reports, then there is no way to annul the record. For any other cases, such as those heard by the 3JX process, this could be accomplished. The Judiciary Committee recommends that Senate Bill 399 be adopted and asks your support. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on SB 399.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 444, relative to settlements on behalf of minors and judgments and decrees in favor of minors. Judiciary Committee. Ought to Pass with Amendment, Vote 5-0. Senator Gottesman for the committee.

Senate Judiciary
February 7, 2008
2008-0452s
09/04

Amendment to SB 444

Amend RSA 463:2, VI as inserted by section 1 of the bill by replacing it with the following:

VI. “Net amount” means the amount of settlement, judgment and related interest and taxable costs, or decree received after the deduction of attorney’s fees, court costs, and other expenses related to the claim.

Amend RSA 464-A:2, XIV-a as inserted by section 3 of the bill by replacing it with the following:

XIV-a. “Net amount” means the amount of settlement, judgment and related interest and taxable costs, or decree received after the deduction of attorney’s fees, court costs, and other expenses related to the claim.

SENATOR GOTTESMAN: Thank you, Madam President. I move Senate Bill 444 ought to pass with amendment. This bill requires approval of certain settlements on behalf of minors, and judgments and decrees in favor of minors by the Superior or District Court in which the action is pending. The legislation was requested by the Supreme Court who considers the legislation merely housekeeping in order to make the statute more readable. The committee amendment clarifies that any related interest and taxation of costs would be included. The Judiciary Committee recommends that Senate Bill 444 be adopted as amended and asks your support. Thank you.

The question is on the adoption of Committee Amendment 0452s.
Committee Amendment 0452s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 444.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 360, relative to local enforcement of the state building code. Public and Municipal Affairs Committee. Ought to Pass, Vote 4-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Madam President. I move that Senate Bill 360 ought to pass. This bill clarifies the authority of towns and cities to enforce the state building code, whether or not they have adopted local amendments by ordinance, and this legislation came as a request from the Building Code Review Board. This issue over local authority has been a confusing one for cities and towns, and has led to various opinions by municipal attorneys. That's a twist, isn't it? This bill brings much needed clarity regarding local enforcement. The Public and Municipal Affairs Committee asks for your support on this bill of ought to pass. And I thank you.

(The Chair recognized Sen. DeVries for a question of Sen. Barnes.)

SENATOR DEVRIES: Sen. Barnes, could you tell me, do you know if this means that if the state building code has been adopted by a municipality already, or has been changed to suit their local ordinance, would this supersede those changes that were made at the local level?

SENATOR BARNES: Senator, I think you asked that question in committee, and I think the answer was –

SENATOR DEVRIES: I did not.

SENATOR BARNES: You didn't ask that question?

SENATOR DEVRIES: No.

SENATOR BARNES: Sounds like a familiar question. I thought the answer to that was no. But I'm not sure.

SENATOR DEVRIES: That would be your understanding. Thank you.

SENATOR BARNES: That was my understanding, but I might be wrong.

SENATOR DEVRIES: Okay.

SENATOR BARNES: It doesn't happen often, but it does happen.

SENATOR DEVRIES: Let's hope this is not the first time.

SENATOR BARNES: That's right.

(The Chair recognized Sen. Clegg to speak.)

SENATOR CLEGG: Thank you, Madam President. In light of the question, I'd just like to state that the intent of the legislation, and the way it was drafted, is to allow every community to be able to enforce the provisions of the statewide building code. One of the provisions of the statewide building code allows for any community to have a more stringent building code. But, nonetheless, it allows it to start as a base without – without actually adopting every single line of the statewide building code. It can adopt it by reference, which means every time the Legislature makes a change to the statewide building code, it automatically flows to all the communities. We put it out there because the attorneys for a lot of the communities had stated that they weren't sure that their local enforcement officers had the authority to do, to do the enforcement of

the code, and thus were afraid of lawsuits every time they went in. And there were some builders out there who were saying: You don't have the authority, I'm going to sue you. You don't have the authority, I'm not listening to you. This clears that all up, but it doesn't stop any community from adopting more stringent provisions. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on SB 360.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 357, relative to the examination of acts and resolves before printing. Rules and Enrolled Bills Committee. Inexpedient to Legislate, Vote 3-2. Senator Gottesman for the committee.

SENATOR GOTTESMAN: Thank you, Madam President. I move Senate Bill 357 inexpedient to legislate. This bill sought to allow the Director of Legislative Services to examine Acts and Resolves during enrollment of bills prior to enactment for technical and clerical errors. Currently, the Director of Legislative Services has the authority to make these sorts of nonsubstantive changes to legislation after it has been signed by the Governor. The sponsors of this bill were concerned that the aforementioned authority might be abused and used to manipulate the legislative intent of a bill after its enactment. However, the majority of the Committee believes this worry to be unfounded and that such a precautionary measure is unnecessary, citing that this measure has rarely, if ever, been used in the past. Please join the Rules and Enrolled Bills Committee and vote Senate Bill 357 inexpedient to legislate. Thank you, Madam President.

(The Chair recognized Sen. Clegg to speak.)

SENATOR CLEGG: Thank you, Madam President. I rise in opposition to the committee recommendation. While some people believe that it's been rarely used, it's actually been used a lot more than you know. Under the current law, the Director of OLS has the authority to make a change to a bill after the Governor has signed it. Now, I think that's outrageous that after the Legislature has voted, after the Governor has signed it, someone can go to the Director of OLS and say, "That's really not what we meant, so let's change these words." Now, why doesn't anybody know that it's been used five times in the last eight years? Because the Legislature doesn't have to know. There's no provision in here that says when the Director of OLS does that, she has to inform all of us. She doesn't have to, or he doesn't have to; whoever happens to be in that position. What this bill does is it says that under the enrolled bill process, we can make the changes. But once that bill has reached the Governor's desk and the Governor signs it, nobody, but nobody, can make a change without filing a bill and going through the process to make it public. A little bit of sunlight, a little bit of sunshine sure helps a lot of what happens around here. To allow a piece in the law to remain that does allow someone to do something secretive, and to change by one or two words what actually got passed is wrong, and it's time we stop it. Whether it's been abused or it hasn't been abused, I don't know. I know it's been used five times in eight years, but I still don't know what they changed or what bills they used. I think that it's time that we said once the Governor signs a bill, that's it. Any changes have to become in the form of a bill for a change in the next session. Thank you.

The question is on the adoption of the committee recommendation of Inexpedient to Legislate on SB 357.

A roll call was requested by Sen. Clegg, seconded by Sen. Barnes. The following Senators voted Yes: Reynolds, Sgambati, Burling, Cilley, Janeway, Kelly, Gottesman, Foster, Larsen, DeVries, D'Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Kenney, Odell, Roberge, Bragdon, Clegg, Gatsas, Barnes, Letourneau, Downing.

Yeas: 14 - Nays: 10

Motion of Inexpedient to Legislate adopted.

SB 363, requiring youth operators and passengers of OHRVs and snowmobiles to wear approved protective headgear. Transportation and Interstate Cooperation Committee. Ought to Pass with Amendment, Vote 4-0. Senator Kelly for the committee.

Transportation and Interstate Cooperation

February 8, 2008

2008-0471s

06/09

Amendment to SB 363

Amend the bill by replacing all after the enacting clause with the following:

1 New Section; OHRVs; Protective Headgear. Amend RSA 215-A by inserting after section 13 the following new section:

215-A:13-a Protective Headgear. No person under the age of 18 shall operate any OHRV within this state without wearing eye protection and protective headgear which meets or exceeds the specifications of FMVSS 218.

2 Off Highway Recreational Vehicles: Operation; Requirement Added. Amend RSA 215-A:29, XV and XVI to read as follows:

XV. No person under the age of 18 shall operate any OHRV within this state without wearing ~~a protective helmet and~~ eye protection **and protective headgear which meets or exceeds the specifications of FMVSS 218.**

XVI. No person shall operate any OHRV within this state carrying passengers under the age of 18 unless each **such** passenger is wearing ~~a protective helmet~~ **eye protection and protective headgear which meets or exceeds the specifications of FMVSS 218.**

3 New Section; Snowmobiles; Protective Headgear. Amend RSA 215-C by inserting after section 29 the following new section:

215-C:29-a Protective Headgear. No person under the age of 18 shall operate any snowmobile within this state without wearing eye protection and protective headgear which meets or exceeds the specifications of FMVSS 218.

4 Snowmobiles; Operation; Requirement Added. Amend RSA 215-C:49, XIX and XX to read as follows:

XIX. No person under the age of 18 shall operate any snowmobile within this state without wearing ~~a protective helmet and~~ eye protection **and protective headgear which meets or exceeds the specifications of FMVSS 218.**

XX. No person shall operate any snowmobile within this state carrying passengers under the age of 18 unless each **such** passenger is wearing ~~a~~ **eye protection and** protective ~~helmet~~ **headgear which meets or exceeds the specifications of FMVSS 218.**

5 Effective Date. This act shall take effect January 1, 2009.

2008-0471s**AMENDED ANALYSIS**

This bill requires operators and passengers of OHRVs and snowmobiles under the age of 18 to wear eye protection and protective headgear which meets the specifications of FMVSS 218.

SENATOR KELLY: Thank you, Madam President. I move Senate Bill 363 ought to pass with amendment. This bill requires operators and passengers of OHRVs and snowmobiles under the age of 18 to wear protective headgear. The committee amendment ensures that the protective headgear would meet or exceed the specification of FMVSS 218, which is the test administered by the National Highway Traffic Safety Administration. Please join the Transportation and Interstate Cooperation Committee and vote ought to pass with amendment. Thank you.

The question is on the adoption of Committee Amendment 0471s. Committee Amendment 0471s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 363.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 517-FN, relative to commercial advertising on toll booths. Transportation and Interstate Cooperation Committee. Inexpedient to Legislate, Vote 4-0. Senator Burling for the committee.

SENATOR BURLING: Thank you, Madam President. I move Senate Bill 517 inexpedient to legislate. This bill would require the Commissioner of Transportation to seek and allow commercial advertising on toll booths at any toll plaza where the E-ZPass toll system is used. It's the belief of the Committee that placing advertising at the toll plazas would be distracting, it would constitute a safety hazard, especially for motorcycle drivers who are already at some disadvantage while stopped to pay tolls. While the Committee appreciates mightily the effort to bring the additional revenue for the Highway Fund, we do not believe that this is the best way to do it. Please join the Transportation and Interstate Cooperation Committee and vote inexpedient to legislate. Thank you, Madam President.

(The Chair recognized Sen. Kenney to speak.)

SENATOR KENNEY: Thank you, Madam President. I brought this bill, Senate Bill 513 [sic], for one reason and one reason only: to create revenue for the State of New Hampshire with its transportation system. And as you can see, if you look down at the fiscal note, what it suggests is that we can raise \$500,000 for the transportation system. Arguably, \$200,000 of that, you know, would go to a marketing firm to market whoever that contract went out to. But perhaps that contract could even be a lot less, if a good bid went out. The whole thing, if you look at our transportation system today, is there's a lack of revenue, and there's an inability to do a lot of these transportation projects around the state because of that lack of revenue. If you look at our Highway Trust Fund, the money's not there. If you look at the turnpike system, we had to raise the tolls in order to find additional revenues. This particular bill does not go into the pockets of the taxpayers. The taxpayer is not asked to foot the bill. It's simply a private company coming in, putting an advertisement, whether they put it on their receipts, it could be Citizens Bank,

it could be McDonalds, or if it's a side parking area of the toll system, they could put a sign there, or they could say – they could put a sign right by the basket or put a sign right by, "Thank you for your E-ZPass contribution." I understand the concern about the safety hazard when it comes to signage, and that's an issue that's been addressed nationally, and it will continue to be addressed nationally, and perhaps here in New Hampshire. But if we go ahead with the smaller-type sign that's not distracting, and there's a company out there in the private sector that wants to come into a contract with New Hampshire and pay revenue for that advertising, I think it's a sound and it's a proven way to produce revenue. It's being done in Massachusetts. It's being done up and down the East Coast. We have – remember how the E-ZPass system got going, it started in one state and went to another state, and now it's here in New Hampshire. I think that we really have to think outside the box, and thinking outside of the box and creating revenue is a good thing. And I think Senate Bill 517 does that. Thank you, Madam President. (The Chair recognized Sen. Barnes for a question of Sen. Burling.)

SENATOR BARNES: Thank you, Madam President. I don't disagree with the Committee on the toll booth signage because I think that could be a safety problem. But did you folks consider the possibility of the advertising being in the rest areas, or in the liquor stores, the area of the liquor stores to get some revenue? That wouldn't be a safety factor; if they're in a rest area, they're not moving. And if they're at the liquor store, they're just walking.

SENATOR BURLING: We did discuss that, Senator. I would say that our primary focus was on the concept that we thought was at the core of what this bill talked about and that is toll plaza advertising. The questions having to do with the wisdom of commercial advertising at other sections or other parts of the highway system, first of all, is already under the jurisdiction of the DOT, and second of all, wasn't really part of this bill as we understood it. That's not to say that this wouldn't be an excellent subject for study. I'm not sure that the DOT isn't already trying to think about it. But the discussion before us was a net proceed of around maybe 300,000, and the costs, as we understood it, was advertising at the toll plazas, when we hope that people are watching what line – lane they're in and what's in front of them.

SENATOR BARNES: Senator, I thank you for that answer. And would you agree that maybe we could send a message to DOT that we are interested in looking at that in the future for some revenue? It looks like a great idea that Sen. Kenney had except maybe just move it out of the toll booths and move it into the other areas. Could we do something to let DOT know that your committee feels that might be a good way to go?

SENATOR BURLING: In response to the further question, I would say that DOT was there, they were listening. My impression was they were already thinking about those kinds of ideas.

SENATOR BARNES: Ahah. Okay. Thank you very much, Senator.

SENATOR BURLING: Thank you.

(The Chair recognized Sen. Kenney for a question of Sen. Burling.)

SENATOR KENNEY: Thank you, Sen. Burling. I appreciate that at the late hour. A few years ago we went ahead with the E-ZPass system, and we can use that for multiple purposes, if we choose to, with the current contractual arrangement, which is, we could use that as a swipe card

for fast food or some other type of retail activity. What I'm hearing from you is that you're suggesting a study committee to really address this issue. Would you be agreeable to table this so I can come back with an amendment to study this issue?

SENATOR BURLING: If I may, Madam President. I would tend to yield to my chairman on that issue and my fellow members of the Committee. It's not my place to decide what to do with this. I would emphasize to the membership of this body, the concept of advertising as a supplemental revenue source for our highway system is not a new one. It's been around for some time. As we enter into more and more trouble, my chairman and I had the good fortune to go to Philadelphia this past weekend and learn a lot about what other states are trying to do to solve their highway funding problems. New Jersey is trying to sell the New Jersey Turnpike, which is not something I recommend. I think the ideas are under examination at present. This bill just didn't seem to be the vehicle that attracted positive support. And with that, I'll shut up.

(The Chair recognized Sen. Gottesman.)

SENATOR GOTTESMAN: I move the question. (Laughter)

Sen. Gottesman moved the question.

Without objection, the Chair moved to close debate.

The question is on the committee recommendation of Inexpedient to Legislate on SB 517-FN.

Motion of Inexpedient to Legislate adopted.

SENATOR LETOURNEAU: Thank you, Madam President. Would this be an appropriate time to take a bill off the table?

PRESIDENT LARSEN: I understand it's a Transportation bill, you may make that motion.

SENATOR LETOURNEAU: That's correct. I'd like to take Senate Bill 303 off the table and offer the amendment that I promised would be forthcoming last week. And I don't have the amendment myself, so I can't give you the number.

MOTION TO REMOVE FROM THE TABLE

Sen. Letourneau moved to have SB 303-FN removed from the table.

Motion adopted.

SB 303-FN, relative to special number plates.

The question is on adoption of committee recommendation of Ought to Pass on SB 303-FN.

PRESIDENT LARSEN: Senate Bill 303 is off the table. You may speak to the bill.

SENATOR LETOURNEAU: Thank you, Madam President. This is a very simple amendment. I don't have it in front of me, but when you see it, it's just going to be an amendment that's germane to the content of the bill. This would allow the State of New Hampshire to give the Gold Star Mother plates to the Gold Star Mothers but at absolutely no cost to them. What has occurred since the last time we have passed this Gold Star Mother's plate, when they went to 3M to have the plates manufactured, the 3M Company made a hundred sets of these plates and did not charge the

State of New Hampshire for these plates, they donated them to us. State law doesn't allow us, under the law, to give them away. This amendment will solve that problem. That's ... I'm open to any questions. One last thing, Madam President: I've asked that this section of the bill be effective upon passage, and would urge you to ask the House to fast-track this through the House process.

(The Chair recognized Sen. D'Allesandro for a question of Sen. Letourneau.)

SENATOR D'ALLESANDRO: Thank you, Madam President. Sen. Letourneau, I look at the fiscal note. Is the fiscal note still viable, 'cause we've had conversations about this and these numbers seem to be much different than the numbers we have been talking about.

SENATOR LETOURNEAU: The fiscal note on 303?

SENATOR D'ALLESANDRO: Yes.

SENATOR LETOURNEAU: This fiscal note was probably the original fiscal note before the bill came to committee, and after we changed it, it may be – it may change somewhat. So I don't have an updated fiscal note for you.

SENATOR D'ALLESANDRO: Okay. Further question, Madam Chairman? Have you, Senator, have you asked for an updated fiscal note?

SENATOR LETOURNEAU: I have not. I don't think it's ...

SENATOR D'ALLESANDRO: We should send it ... we should send it to Finance and we'll look at it then. Thank you. Thank you, Madam President.

PRESIDENT LARSEN: Senate Bill 303 has, was from – referred from the Finance Committee, so if you would like to move to re-refer Senate Bill 303 with its floor amendment, we would need to adopt the floor amendment and then refer it back to Finance for a review of its fiscal effect.

SENATOR D'ALLESANDRO: Thank you, Madam President. I think that that's an excellent suggestion, given the fact that we now have a fairly dramatic change in the bill, and we should review it. Thank you.

(The Chair recognized Sen. Barnes for question of Sen. D'Allesandro.)

SENATOR BARNES: Thank you, Madam President. Sen. D'Allesandro, there is a sense of urgency with this bill to move it along quickly. Would you be able to get that into your committee like real quick, so we can get a finalization at our next week's session?

SENATOR D'ALLESANDRO: If the bill passes as amended today, we could look at it immediately next week.

SENATOR BARNES: You can have it back to us next week?

SENATOR D'ALLESANDRO: We'll get it out as quickly as we can.

SENATOR BARNES: Thanks a lot.

SENATOR D'ALLESANDRO: You're welcome.

The question is on the adoption of committee recommendation of Ought to Pass on SB 303-FN.

PRESIDENT LARSEN: Where, procedurally you would offer your Floor Amendment 475, which has not yet been offered officially. Sen. Letourneau, I would recognize you to introduce and propose Senate Bill 475, or Floor Amendment 475.

Sen. Letourneau offered a floor amendment.

Sen. Letourneau, Dist. 19

Sen. Burling, Dist. 5

Sen. Kelly, Dist. 10

Sen. DeVries, Dist. 18

Sen. Clegg, Dist. 14

February 14, 2008

2008-0475s

03/09

Floor Amendment to SB 303-FN

Amend the bill by replacing all after section 1 with the following:

2 Gold Star Number Plates; Fees. Amend RSA 261:87-c, I to read as follows:

I. The department shall furnish one set of special number plates, designed by the director with the approval of the commissioner, for one motor vehicle owned by a mother of a person killed while on duty in the United States armed forces. These gold star number plates shall be issued upon payment of the regular registration [~~and number plate~~] fees. ***There shall be no number plate fees for gold star number plates.***

3 Effective Date.

I. Section 2 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect July 1, 2008.

2008-0475s

AMENDED ANALYSIS

This bill makes the issuance of certain special number plates by the director of the division of motor vehicles mandatory and adds active duty members of the armed forces to those eligible for special number plates. This bill also exempts gold star number plates from the number plate fee.

SENATOR LETOURNEAU: Thank you, Madam President. This floor amendment is offered by the Transportation Committee with all the members on it, and it is Amendment No. 2008-045 – 75s.

The question is on the adoption of Floor Amendment 0475s.

A roll call was requested by Sen. Letourneau, seconded by Sen. Barnes.

SENATOR LETOURNEAU: I wonder if we could put this back on the table until next week?

PRESIDENT LARSEN: You make a motion to table.

SENATOR LETOURNEAU: Yeah. Well, I think maybe – I think perhaps I could solve Sen. D'Allesandro's problem in that interim, also, and it would allow the whole body to be involved in the roll call.

MOTION TO TABLE

Sen. Foster moved to have SB 303-FN laid on the table.

Motion adopted.

LAIID ON THE TABLE

SB 303-FN, relative to special number plates.

SB 456, establishing a committee to study the impact of the research and development tax credit and the current cap on the credit on high

technology industries and New Hampshire businesses in general. Ways and Means Committee. Ought to Pass with Amendment, Vote 5-0. Senator Reynolds for the committee.

Senate Ways and Means

February 7, 2008

2008-0461s

09/10

Amendment to SB 456

Amend subparagraph I(a) as inserted by section 2 of the bill by replacing it with the following:

(a) Two members of the senate, appointed by the president of the senate.

Amend the bill by replacing section 4 with the following:

4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named senate member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Three members of the committee shall constitute a quorum.

MOTION TO TABLE

Sen. Reynolds moved to have SB 456 laid on the table.

Motion adopted.

LAI D ON THE TABLE

SB 456, establishing a committee to study the impact of the research and development tax credit and the current cap on the credit on high technology industries and New Hampshire businesses in general.

SB 477, requesting that the attorney general seek a ruling from the supreme court relative to whether New Hampshire may opt out of enforcing the provisions of the Master Settlement Agreement. Ways and Means Committee. Inexpedient to Legislate, Vote 5-0. Senator Reynolds for the committee.

SENATOR REYNOLDS: Thank you, Madam President. I move SB 477 inexpedient to legislate. This bill would request the Attorney General's Office of the State of New Hampshire to seek an advisory ruling from the New Hampshire Supreme Court relative to whether New Hampshire may opt-out of the so-called "Master Tobacco Settlement Agreement." Madam President and colleagues, this summer I was chair of the SB 55 Commission which studied this particular issue, and I want to share with you a couple of the salient findings of our committee. And I want to thank the sponsor of the legislation. I understand we're all concerned about revenue in New Hampshire, and certainly I would be in agreement that we want to explore reasonable efforts to garner revenue. However, I have to say after studying this, this summer, that, number one, I do not believe that the New Hampshire Supreme Court would, in fact, give us any kind of positive feedback regarding a ruling on this issue; and number two, I think that we have a lot of other important matters that we possibly could put before the New Hampshire Supreme Court. And I'm concerned about the efficacy of the payments stream from the settlement that we've received.

And I just want to read very briefly from a recommendation about this, this whole Master Settlement Agreement. Up until this point, New Hamp-

shire's received about \$312 million under the Master Settlement Agreement. And that agreement was based on a negotiation between our state Attorney General's Office and the four major tobacco companies, and an agreement was reached. And the agreement involved consideration that was flowing to the state, and has flowed to the state as a result of that. In addition to money, we have received basically agreements by the tobacco companies not to advertise in certain matters. These agreements are negotiated on a state-by-state basis, and in my opinion, they're contractual in nature. In other words, we received certain benefits and in return for that, we gave up the right to bring suit. I am very concerned, Madam President and colleagues, that we cannot do anything to expose New Hampshire to the risk of loss of revenue if, in fact, we were to try to opt-out of this major agreement. So the two problems I have is that, in my opinion, without a doubt, there would be litigation brought against the State of New Hampshire, if we attempted, at this point, to undo what was essentially, an approved, a court-approved settlement between our state and the major tobacco companies. And the other piece of this is that I think that we would spend possibly, arguably, millions of dollars in a defensive mode in New Hampshire if we were to attempt to do it. And while again, I want to – I understand the motivation of the sponsors, but we have studied this before. This is the second time in five years that a study committee has rejected the idea of trying to open up the Master Settlement Agreement, and that's why I would appreciate the body voting ITL on this bill. Thank you, Madam President.

(The Chair recognized Sen. Clegg to speak.)

SENATOR CLEGG: Thank you, Madam President. I rise in opposition to the current motion. When I went to the body and I spoke to the Committee, I admitted that the way the bill was written, asking the AG to ask an opinion of the Supreme Court was wrong. I also admitted that trying to get out of the Master Settlement Agreement isn't really what I intended. So I had offered that we ask, we seek a ruling as a Senate, from the Supreme Court. And the reason why I asked that is really I don't want to get out of the Master Settlement Agreement. But I will also say that I believe if those who participate in the Master Settlement Agreement don't like what we're doing and decide to not give us any money at all, if that's what breaks the agreement, then that also means that every person who's been damaged by cigarette smoke gets to drag them back to court. I don't think they want that anymore than we want them to stop paying. So let's talk about how they pay. We've already lost between five and seven million dollars because every time the nonparticipating manufacturers gain a share of the market, they're entitled to lower the amount of payment that they give to the State of New Hampshire. They've won a couple of arbitration suits and they're back in court again trying to lower what they give us.

Remember, the tax that they put on those cigarettes to pay that Master Settlement Agreement, there's one company in particular that gets to keep that tax for the first one billion sticks it produces. We said okay with their taxing or adding that money, they get to keep that before they send it to us. Now, if you overturn the committee recommendation, I have a floor amendment, and here's what it says: that the Master Settlement Agreement, the New Hampshire Senate seeks a ruling from the Supreme Court relative to the following question: "May the State rebate the portion of the Master Settlement Agreement payments that stay in New Hampshire against any tax or portion of any tax on any tobacco?" What we've been trying to do is put a flat tax on all tobacco. But it wouldn't be

fair to do that and make the participating manufacturers pay twice. So what we said was, okay, if you're already paying in, we want to capture the nonparticipating manufacturers, so if you're already paying in, is it legal for us to rebate your MSA payment back to you as a credit against the tax that we want to put on all cigarettes? Now, we keep getting conflicting reports: Yes, it's legal. No, it's not legal, it violates the Master Settlement Agreement to do that. I don't see where it does.

But what I want to ask the Court is, is it constitutional for us to put a tax on everybody and rebate a portion of something else from the Master Settlement Agreement to offset it for those who have been responsible enough to participate in sending us the money, which, by the way, isn't supposed to be for the General Fund; it was actually supposed to be used to offset the cost of treatment for people on Medicare and Medicaid with tobacco-related diseases. Part of it was also supposed to be used for cessation. It was supposed to be used for advertising to teach kids not to take it up. The fact that we don't use the money for any of that ... is disgusting. I don't like that. Now what we have is we have an opportunity to pick up the \$40 million that leaves the State of New Hampshire and goes to states like New York and California, collected here. Forty-million dollars collected here, that we let go to other states because we're afraid to tax everybody equally and give back to the MSA supporters the amount of money from that tax that actually stays here. The only way that I can move forward, or so it appears, is to get the Supreme Court to ask – to get the Supreme Court to tell us yes, it would be constitutional for you to rebate the Master Settlement Agreement or the Master Settlement payments that stay in New Hampshire, back to those who pay a part of the new tax. Like I said, it's \$40 million. Maybe that \$40 million can actually be used to offset the cost of Medicare, Medicaid and smoking cessation, because those are all costs we're paying for right now out of our pockets. So maybe if we did it right, we would actually have money to cover the costs of tobacco-related illness. Thank you, Madam President.

(The Chair recognized Sen. Gatsas to speak.)

SENATOR GATSAS: Thank you, Madam President. I rise in opposition of the ITL. Sen. Reynolds is right, we've been talking about this for five years. This came up the first time when Sen. Estabrook, myself, and Sen. Clegg were on Interstate Commerce. And it appeared at that time that when you looked at it, that the State of New Hampshire is a "donor town." So maybe that's an easier way to explain it. We should be getting \$80 million because of the number of packs of cigarettes that we sell in this state, even though we don't have that many people consuming those cigarettes, we have people coming across the border. But we only get \$40 million. The other \$40 million that should be coming to New Hampshire, as Sen. Clegg said, goes to the big states because the Master Settlement Agreement is based on population, and while their cigarette sales go down in those states, they're getting more money. It doesn't make sense. The State of Minnesota had a ruling by their Supreme Court that if they'd had not called it a "health tax," they could have done what we're doing now. So states are starting to challenge this, these "donor states," as they see them, Virginia and Kentucky. It's going to happen. The Master Settlement Agreement is not a fair tax, 'cause we don't receive what we should be receiving in this state. And people say, "Well, what happens if they leave and don't give us our money?" It's pretty simple, as Sen. Clegg said. We charge the tax, it's \$80 million worth of revenue that comes to this state and they don't give us forty-three. So that's not such a bad deal. The state wins \$40

million. It's been studied and it's been looked at, and the problem is everybody puts this fear that we may lose Master Settlement Agreement dollars. We're already losing them. We're losing them now. If we were supposed to get ... if we got 314 million, double that, we should have gotten 600 million. So I agree, Sen. Clegg's amendment that sends this to the Supreme Court for a ruling is something we should do. Thank you, Madam Chair, Madam President.

(The Chair recognized Sen. Reynolds to speak.)

SENATOR REYNOLDS: Thank you, Madam President. I think that the point that we're talking about, and we need to make sure that we're phrasing this correctly, is that we're not talking about a tax; we're talking about an "agreement" that was reached by the State of New Hampshire that was negotiated by our attorney, our Attorney General's Office, in a "settlement" of a case. We have a court order and we have statutory procedures in place and a qualifying statute that incorporate the terms of the agreement. I humbly disagree with my colleagues that there is any fear issue here. The reality is we will be challenged by the four major tobacco companies if we attempt to overturn this in any way. Thank you very much.

(The Chair recognized Sen. Gottesman.)

SENATOR GOTTESMAN: You're looking in the right direction. I was just moving the question. (Laughter)

Sen. Gottesman moved the question.

The Chair moved, without objection, to end debate.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on SB 477.

A roll call was requested by Sen. Clegg, seconded by Sen. Barnes.

The following Senators voted Yes: Reynolds, Sgambati, Burling, Cilley, Janeway, Odell, Kelly, Gottesman, Foster, Larsen, DeVries, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Kenney, Roberge, Clegg, Gatsas, Barnes, Letourneau.

Yeas: 16 - Nays: 7

Motion of Inexpedient to Legislate adopted.

(The Chair recognized Sen. D'Allesandro.)

SENATOR D'ALLESANDRO: Thank you, Madam President. Madam President, can we move 303 from the table? I think we have it solved at this point in time.

MOTION TO REMOVE FROM THE TABLE

Sen. D'Allesandro moved to have SB 303-FN removed from the table.

Motion adopted.

SB 303-FN, relative to special number plates.

The question is on the submission of a floor amendment.

Sen. Letourneau, Dist. 19

Sen. Burling, Dist. 5

Sen. Kelly, Dist. 10

Sen. DeVries, Dist. 18
Sen. Clegg, Dist. 14
February 14, 2008
2008-0475s
03/09

Floor Amendment to SB 303-FN

Amend the bill by replacing all after section 1 with the following:

2 Gold Star Number Plates; Fees. Amend RSA 261:87-c, I to read as follows:

I. The department shall furnish one set of special number plates, designed by the director with the approval of the commissioner, for one motor vehicle owned by a mother of a person killed while on duty in the United States armed forces. These gold star number plates shall be issued upon payment of the regular registration [~~and number plate~~] fees. ***There shall be no number plate fees for gold star number plates.***

3 Effective Date.

I. Section 2 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect July 1, 2008.

2008-0475s

AMENDED ANALYSIS

This bill makes the issuance of certain special number plates by the director of the division of motor vehicles mandatory and adds active duty members of the armed forces to those eligible for special number plates. This bill also exempts gold star number plates from the number plate fee.

SENATOR D'ALLESANDRO: Thank you, Madam President. Madam President, after discussions with Sen. Letourneau, here's the situation with regard to the Gold Star number plates. There's no fee for the Gold Star number plates. Sen. Letourneau informs me that these plates have been donated to the State by the 3M Company, so there's no, there's no cost involved with that section of the amendment. In the original, the original bill calls for the Veterans' Plates which would be funded out of the Plate Fund. So we now have two separate, two separate entities, one which will be taken care of by an existing appropriation, the Plate Fund, and there's no new money needed for this because the plates, he assures me that the plates have been donated to the State by the 3M Corporation. So there's no, there's no need to re-look at it at Finance in light of the fact that there's no cost associated with this. Thank you, Madam President.

The question is on the adoption of Floor Amendment 0475s.

Floor Amendment 0475s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 303.

A roll call was requested by Sen. Letourneau, seconded by Sen. Barnes.

PARLIAMENTARY INQUIRY

PRESIDENT LARSEN: Parliamentary inquiry.

SENATOR D'ALLESANDRO: We're voting on 303 as amended?

PRESIDENT LARSEN: Yes. The question is on the adoption of ought to pass as amended on Senate Bill 303. The clerk shall call the roll.

The following Senators voted Yes: Gallus, Reynolds, Kenney, Sgambati, Burling, Cilley, Janeway, Odell, Roberge, Kelly, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, DeVries, Letourneau, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.

The following Senators voted No: None.

Yeas: 23 - Nays: 0

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 491, excluding the value of a view from property tax assessment. Ways and Means Committee. Inexpedient to Legislate, Vote 4-1. Senator Janeway for the committee.

MOTION TO TABLE

Sen. Janeway moved to have SB 491 laid on the table.

The question is on the motion to table.

A roll call was requested by Sen. Kenney, seconded by Sen. Barnes.

The following Senators voted Yes: Sgambati, Burling, Cilley, Janeway, Odell, Roberge, Kelly, Gottesman, Foster, Larsen, DeVries, D'Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Reynolds, Kenney, Clegg, Gatsas, Barnes, Letourneau, Downing.

Yeas: 15 - Nays: 8

Motion adopted.

LAIID ON THE TABLE

SB 491, excluding the value of a view from property tax assessment.

SB 486, relative to the duties and responsibilities of special deputy forest rangers. Wildlife, Fish and Game and Agriculture. Ought to Pass with Amendment, Vote 4-0. Senator Janeway for the committee.

Sen. Cilley, Dist. 6

January 31, 2008

2008-0354s

04/09

Amendment to SB 486

Amend RSA 227-J:3 as inserted by section 1 of the bill by replacing it with the following:

227-J:3 Special Deputy Forest Rangers. The director may appoint, as special deputy forest rangers, persons ~~[in the employ of the department and, upon the recommendation of the district forest ranger, such other persons as may be able]~~ to assist the director in the enforcement of ~~[all state laws and rules applicable to the harvest of timber for which the division has enforcement authority.]~~ *the provisions of this title and any other laws for which the division has enforcement authority, the protection and improvement of forestlands throughout the state, and the protection of persons and property on property owned, leased, or under the control of the department.* Such individuals *shall be employees of the division and* shall have powers and duties exercised only at the discretion of the ~~[district forest ranger]~~ *director*. Such appointees shall be allowed, for their services, such compensation

as may be fixed by the commissioner and the director, and such compensation shall be deemed an expense of enforcing state ~~[timber harvest]~~ **forest protection** laws and paid by the state.

SENATOR JANEWAY: Thank you, Madam President. When you hear from me, you know you're getting close to the finish line. (Laughter) I move Senate Bill 486 ought to pass with amendment. This bill, requested by the Department of Resources and Economic Development, would expand special deputy forest rangers authorized under RSA 227-J:3 to include laws pertaining to forest fire protection and prevention, forest health laws, and other state laws for the protection of people and resources on DRED land. These special deputy forest rangers currently have the authority to only enforce timber harvesting laws. While timber harvesting laws do represent a large portion of the overall law enforcement activity of forest rangers, given the fact that protection of state forests, parks and natural areas have become an important part of the forest ranger duties, this bill would enhance the ability of the Division to continue to provide protection to our great state. The amendment strengthens the legislation by making it clear that the individuals must be employees of the Division and the director will have authority over these employees. Please join the Wildlife, Fish and Game and Agriculture Committee in voting this bill ought to pass with amendment. Thank you, Madam President.

The question is on the adoption of Committee Amendment 0354s.

Committee Amendment 0354s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 486.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

RESOLUTION

Sen. Foster moved that the Senate now adjourn from the Early Session, that the business of the Late Session be in order at the present time, that all bills and resolutions ordered to a Third Reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

Motion to adjourn adopted.

Adjournment from Early Session.

LATE SESSION

Third Reading and Final Passage

SB 303-FN, relative to special number plates.

SB 309-FN, relative to the regulation of amateur and professional fighting sports by the boxing and wrestling commission.

SB 317-FN, relative to the retail sale of tobacco products.

SB 318-FN, establishing a commission to study the creation of a large animal care worker classification.

SB 319-FN, relative to third party liability and state recovery of public assistance.

SB 324-FN, consolidating all substance abuse services in the office of alcohol and drug abuse prevention within the department of health and human services.

SB 352-FN, relative to shoreland protection.

SB 355-FN, relative to room and board scholarships for children of fire-fighters and police officers killed in the line of duty.

SB 360, relative to local enforcement of the state building code.

SB 363, requiring youth operators and passengers of OHRVs and snow-mobiles to wear approved protective headgear.

SB 390, establishing a suicide prevention council.

SB 395, establishing a commission to review New Hampshire's statutes on human immunodeficiency virus education, prevention, and control.

SB 399, permitting annulment of certain criminal records in the supreme court.

SB 418, replacing references to "charter school" with "chartered public school".

SB 437, relative to access to voter database information.

SB 439, relative to money transmitters and mortgage servicing companies.

SB 442-FN, requiring that the proceeds of fees for motions to appear in court pro hac vice be paid into the law library revolving fund.

SB 444, relative to settlements on behalf of minors and judgments and decrees in favor of minors.

SB 454, relative to certain changes to the controlled drug act.

SB 459, establishing an advanced manufacturing education advisory council.

SB 464, relative to the number of children in a licensed foster home.

SB 472, relative to consumer protection from certain practices of payday loan, small loan, and title loan lenders and establishing a commission to study access to consumer credit for people in New Hampshire.

SB 478, relative to processing absentee ballots.

SB 486, relative to the duties and responsibilities of special deputy forest rangers.

SB 528-FN, relative to a mercury-added thermostat collection program.

SJR 1, prohibiting the department of health and human services from adopting proposed administrative rule He-P 1906.02.

HB 267, relative to certain small loans.

ANNOUNCEMENTS

SENATOR BARNES (Rule 44): Thank you, Madam President. I'd like to share a letter that I received from a constituent. It affects, I think, everyone in this room. "Dear Senator Barnes: I'm respectfully asking for your prompt attention to the following matter. As it is no secret, New Hampshire Medicaid suffers from a provider reimbursement shortfall and we just received a 5 percent decrease in funding for 2008. This will equate to a \$46,000 loss to Colonial Poplin," which happens to be in the Town of Fremont. "In 2007, NHHCA was successful in lobbying for the passage of House Bill 721 which directs the Department of Health and Human Services to pay any and all remaining balance in the Medicaid Nursing Home budget to the facilities for which it was allocated. House Bill 721 explicitly instructed the Department of Health and Human Ser-

vices to complete this payment by October 1, 2007. Four months later, payment has yet to be seen. It was in former Commissioner Stephen's desire to transfer said monies to other state programs. The Department of Health and Human Services owes \$8.9 million to providers for services already rendered due to a budget neutrality factor. And House Bill 721 instructed for this payment no later than October 1st, 2007. These funds are critical for providing high-quality care and product to the phenomenally increasing Medicaid population. On behalf of Colonial Poplin, which is still family-owned and operated by my brother Jeff and myself, I ask you to assist in ensuring that long-term Medicaid providers are granted the money we are entitled to and that the Legislature has directed for us to receive. Commissioner Toumpas has been attempting to rectify the situation since taking office last month. Commissioner Toumpas has indicated that he intends to make this payment, but he is currently waiting for direction from the Legislature before proceeding. Specifically, he is waiting for approval from the Senate President Sylvia Larsen and Speaker of the House Terie Norelli. It is my hope that you can assist in this measure."

Now, I wanted to make perfectly clear that Sen. Larsen – I talked to our legal counsel earlier today and he knows that Sen. Larsen has been working on this. Perhaps, Sen. Larsen, you've been pretty good at writing letters, and I understand next week the POW letter will be here, maybe you could have one for some of the Senators that wish to sign on to get this money out to the people that are hurting. I mean, here's a little family operation in the Town of Fremont that's owed 46,000 bucks that was promised and they still haven't got it. That's not the state government that I think I'm working with. There's something wrong when something gets promised and it doesn't happen. So with that, I'll sit down, but guys, think about it, you're probably all have nursing homes in your area that's got the same situation. I'll bet you do, maybe more than one. Thank you.

PRESIDENT LARSEN: Thank you. Sen. Barnes, I'm aware of the problem and we have been working on it. The House Fiscal chairman met, in fact, this morning to discuss it, and we had our Senate legal counsel there. We are working on a solution to it, but there are federal regulations which are making such payment more difficult. So, we are working on it and we'll try to get a letter out so people can see what the response is, as soon as we can find a solution.

SENATOR KENNEY (RULE 44): A Rule 44, Madam President. Madam President, I've served in the Legislature for 14 years, and this was the first time that I've ever actually had to respond in this manner. And earlier, Senate Bill 427 was tabled. Prior to that, under Senate Bill 345, I said that I had some prepared comments on Senate Bill 427, which was to make sure that standards and criteria were offered to New Hampshire families when it came – when it comes to their transplant, organ transplant. I did not have that chance to voice my speech. And therefore I think New Hampshire families' voices were not heard today when it comes to organ transplantation. This is a serious issue in the state. You will never know in your district who is on the transplant list, who is going to the transplant list, or who might call you up one night and ask you for your assistance on how to get on a transplant list. And I have to say that there's a family out there that asked me to come to the Legislature to carry the torch, to fight the fight, Nick's fight, to make sure that this never happens again, whether it be a Boston hospital or a New Hampshire hospital. There are 256 transplant centers around the

country. They're at these hospitals. They all have different criteria and standards. So you might go to one hospital, you might have to be insured; you might go to another hospital and you don't have to be insured. All this bill was asking for was an opportunity for New Hampshire voices to be heard.

And I have to say that we've passed "Michelle's Law," we've passed "Amilia's Law," we passed "Megan's Law." I don't know how many other laws that we've passed because of people in life-or-death situations. The Nick Currier situation was a life-or-death situation. I was up at three in the morning to make sure that that family had security to know that their state Senator was working for 'em, and that he was going to find out everything he could about organ transplants, about hospitals around this country, about what's going right and what's going wrong. Because in some cases, in the case of Nick who had Wilson's Disease, you have maybe three or four days to determine if he can get on that transplant list, to see if he can live or die. And because of the mishap that went on at a Boston hospital, he didn't make it. And we send all our families down to Boston and other places for liver transplants. Dartmouth-Hitchcock does a great job. There's one piece of paper right here that I passed out to everybody, after the fact. And said, single piece of paper, "Standards and criteria." Particularly financial criteria that says if you go to Dartmouth-Hitchcock, if you go to Mass. General, if you go to Lahey, here's a piece of paper. Granted this would only affect New Hampshire. But you'd go there and that person who is uninsured would know, can I get a transplant here or do I have to go somewhere else? The decisions have to be made, whether it's minutes, hours or days.

And I want to say that after 14 years and a tabling motion of this seriousness, that I'm upset. The families are going to be calling ya. You haven't even seen the network around this state. You'll be getting e-mails. And at the end of the day, we're here to serve the people, not to table things and not to take someone's voice away. That family's voice was taken away. The New Hampshire voices were taken away. Organ transplantation is serious. It's life or death. And if we don't address it here, in this Legislature, maybe we can address it at the federal level. Because right now our federal delegation is looking into this issue on both sides of the aisles, both Republican and both Democrat. Because with kidneys, kidneys are covered, but livers are not. Livers is no more experimental anymore. Livers are standard procedure when you get a transplant. And so all's I'm saying is that let's get educated on this, Senate, and let's protect our New Hampshire families. Thank you, Madam President.

SENATOR ESTABROOK (RULE 44): Thank you, Madam President. With great sadness I rise to ask you to join me in expressing our deepest sympathy to the family of Nathan Hardy and to recognize his great service to us all. Nathan served his entire career, since 1998, as a Navy SEAL and was Special Warfare Operator Chief Petty Officer, conducting combat operations in support of the Iraq War when he was killed on February 4th. Nathan enlisted in the Navy following his graduation from Oyster River High School. By *all* accounts, he was incredibly talented at what he chose to do. His awards and decorations include the Bronze Star, two Navy and Marine Corps Achievement medals, three Good Conduct medals, two National Defense medals, the Armed Forces Expeditionary medal, an Afghanistan Campaign medal, an Iraq Campaign medal, a Kosovo Campaign medal, a Global War on Terrorism Expeditionary medal, three Sea Service Deployment awards, the NATO medal, an Expert Rifle medal and the Sharpshooter Pistol medal. He will be buried tomorrow at Arlington

National Cemetery, in keeping with his wishes. He leaves his loving wife, a young son, and a brother and parents all too familiar with the grief they now bear. Nathan's brother Josh was lost to terminal cancer, and the grace, courage and honesty with which Steve and Donna Hardy lived through that tragedy is well known in our community. Since then, they have made it their practice to reach out to parents in our area who experience the loss of a child and visit them, cry with them, listen to them. I hope they will know that we now think of them, and that we too mourn the loss of Nathan Hardy. Thank you, Madam President.

SENATOR LETOURNEAU: I wonder if those words could be printed in the permanent journal. I know we're after the session.

PRESIDENT LARSEN: They'll be so recorded.

SENATOR LETOURNEAU: Thank you.

RESOLUTION

Sen. Foster moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, referring bills to committee, scheduling hearings, sending and receiving messages, and processing enrolled bill reports and amendments.

Motion to recess adopted.

The Senate is in recess to the Call of the Chair.

REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bill(s):

HB 351, clarifying that the definition of "overseas business organization" includes all foreign incorporated business organizations and all 80/20 business organizations.

HB 754-FN, repealing the law relative to the Maine-New Hampshire Interstate Bridge Authority.

Sen. D'Allesandro moved adoption of Report of Committee on Enrolled Bills.

Committee Report adopted.

INTRODUCTION OF SENATE BILL(S)

Sen. Foster offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Senate Clerk, Senate legislation numbered from **SB 531 to 538**, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

Resolution adopted.

First and Second Reading and Referral

08-2922

SB 531, relative to the capital appropriation for the Hillsborough north superior court. (Hassan, Dist 23; Foster, Dist 13: Capital Budget)

08-2902

SB 532, relative to administrative fines under the indoor smoking act. (Gottesman, Dist 12; Burling, Dist 5; DeVries, Dist 18; Fuller Clark, Dist 24; Patten, Carr 4; Pilotte, Hills 16; Schmidt, Straf 4; MacKay, Merr 11; Millham, Belk 5: Commerce, Labor and Consumer Protection)

08-2901

SB 533, establishing a committee to study age-based driver's license renewal testing. (Reynolds, Dist 2; Kelly, Dist 10; Burling, Dist 5; Le-tourneau, Dist 19: Transportation and Interstate Cooperation)

08-2903

SB 534-FN, eliminating the processing fee on court credit card transactions. (D'Allesandro, Dist 20; Clegg, Dist 14: Finance)

08-2904

SB 535, relative to exceptions to highway surveillance prohibitions. (DeVries, Dist 18: Transportation and Interstate Cooperation)

08-2908

SB 536-FN, reclassifying certain positions in the insurance department. (Burling, Dist 5; Gottesman, Dist 12; Hawkins, Hills 18: Executive Departments and Administration)

08-2916

SB 537, relative to allowing the commissioner of the department of employment security to participate in a joint local employment dynamics program with the United States Census Bureau and the Bureau of Labor Statistics. (Gottesman, Dist 12: Commerce, Labor and Consumer Protection)

08-2917

SB 538, relative to the community college system of New Hampshire board of trustees and repealing a motor vehicle regulation statute applicable to the community college system. (Gottesman, Dist 12: Education)

Out of Recess.

LATE SESSION

Sen. Foster moved that the Senate adjourn from the Late Session.

Motion adopted.

Adjournment from the Late Session.

February 21, 2008

The Senate reconvened at 10:00 a.m., a quorum being present.

The Reverend Canon Timothy Rich, chaplain to the Senate, offered the following remarks and prayer.

One of my favorite books on leadership is written by a Harvard professor, Ronald Heifetz, who wrote *Leadership Without Easy Answers*. His central premise, as the title suggests, is that the most effective leadership doesn't promise simple solutions to complex issues, but rather acknowledges there's neither a simple answer nor one single answer which solves the problem of the day. He suggests this kind of leadership reduces anxiety, heightens the ability to manage tensions, liberates the creative mind, and invites broader collaboration. As you have before you yet again the issue of education funding, Heifetz' book title is at least appropriately descriptive even if the premise might be debatable. Let us pray:

O God, creator of life and source of wisdom, You have called this body to lead in the search for answers to our most pressing questions. So deepen their understanding of the issues, so open their consideration of the possi-

bilities, so expand their readiness for collaboration, that their deliberations and decisions might reflect the wisdom, compassion, and justice which undergirds every answer You would have us speak. Amen

Sen. Janeway led the Pledge of Allegiance.

INTRODUCTION OF GUESTS AND PRESENTATIONS

Laconia High School football team and coaches, 2007 Div. IV State Champions.

Senate Page: Karen Byrne, Woodsville High School.

Senate Page: Nicholas Smith, Woodsville High School.

SPECIAL ORDER

President Larsen moved that, without objection, SB 434 be Special-Ordered to the end of the Calendar.

SB 434, relative to providers of electronic communication services. Energy, Environment and Economic Development Committee. Ought to Pass, Vote 5-0. Senator Hassan for the committee.

COMMITTEE REPORTS

SB 485, relative to party designations for voters. Election Law and Internal Affairs Committee. Inexpedient to Legislate, Vote 2-0. Senator Burling for the committee.

SENATOR BURLING: Thank you, Madam President. If you'll give me just a second to get organized here. Madam President, I move Senate Bill 485 inexpedient to legislate. This bill would have changed references to voters who are registered from "Undeclared" to "Independent." As easy a concept as that appeared when we first started the hearing on this bill, it soon became clear to the members of the Committee that this is a very complex situation. In some jurisdictions there is a designation of a party called "Independents." The witnesses who appeared before us, some of them seemed to think that that would be a good thing, to have an "Independent" party in New Hampshire. Others wanted nothing to do with the political party, but wanted to be able to call themselves "Independents" on the ballot. The level of confusion was so significant that the Committee felt inexpedient to legislate was the proper motion. I ask you to join the members of Election Law and Internal Affairs in voting inexpedient to legislate. Thank you, Madam President.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on SB 485.

Motion of Inexpedient to Legislate adopted.

SCR 9, urging Congress to fund a community-based outpatient clinic for veterans in Keene. Election Law and Internal Affairs Committee. Ought to Pass, Vote 2-0. Senator Gallus for the committee.

SENATOR GALLUS: Thank you, Madam President. I move that SCR 9 ought to pass. This Senate Concurrent Resolution urges Congress to fund a community-based outpatient clinic for veterans in Keene. This clinic was authorized to be built in 2004, but the funding has not yet materialized. Currently, hundreds of veterans from this area have to travel to White River Junction or Manchester for health exams, and they deserve care that is closer to home. The Election Law and Internal Affairs Committee requests your support for this resolution. And we thank you.

(The Chair recognized Sen. Kelly to speak.)

SENATOR KELLY: Thank you, Madam President. I rise in support of SCR 9. We all have many, many veterans that we're very proud of who live in our communities. Cheshire County, in particular, is very proud of their veterans. However, we are not providing access to healthcare in a reasonable manner for those veterans. These veterans have made a commitment to put their lives on the line for the security of ours. It is only reasonable that they have access to healthcare. Today they have to travel very long distances. They have been trying to get to White River Junction and to the City of Manchester by rides from their friends, and trying to carpool. And they really, truly, do not have access to the care. I think it is only reasonable, because of their hard work and their commitment to our country, that not only they receive healthcare as they were promised, but they deserve it. And I urge all of you to join me in supporting SCR 9 and urge Congress to fund the community health center in Keene as had been promised. Thank you.

(The Chair recognized Sen. Burling to speak.)

SENATOR BURLING: Thank you, Madam President. Madam President, it's my intention to offer a floor amendment further clarifying the language. My colleague asks if we might table the bill for a few moments to add additional language to that floor amendment. So at this time, I would move to table.

PRESIDENT LARSEN: Sen. Letourneau, would you like to make that motion as the previous speaker spoke.

SENATOR LETOURNEAU: I move to table.

MOTION TO TABLE

Sen. Letourneau moved to have SCR 9 laid on the table.

Motion adopted.

LAI D ON THE TABLE

SCR 9, urging Congress to fund a community-based outpatient clinic for veterans in Keene.

SB 328, relative to civil forfeitures for certain waste disposal violations. Energy, Environment and Economic Development Committee. Ought to Pass, Vote 4-1. Senator Cilley for the committee.

SENATOR CILLEY: Thank you again, Madam President. I move SB 328 ought to pass. This bill is the request of the Department of Justice and will raise the limit for civil forfeitures for certain waste disposal violations and will allow the court to consider certain relevant circumstances when determining the civil forfeiture. By increasing the maximum penalty from \$5,000 per violation, which was established in 1974 and hasn't been addressed since, to \$10,000 per day per violation, and by making each day of an ongoing violation a separate violation, we will be providing a strong incentive to repair violations. Please join the Energy, Environment and Economic Development Committee and vote to pass this bill. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on SB 328.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 435, relative to fill and dredge permits in wetlands. Energy, Environment and Economic Development Committee. Ought to Pass with Amendment, Vote 4-1. Senator Fuller Clark for the committee.

Sen. Fuller Clark, Dist. 24
February 12, 2008
2008-0546s
08/10

Amendment to SB 435

Amend the bill by replacing section 2 with the following:

2 New Paragraph; Indirect Impacts. Amend RSA 482-A:2, II-a to read as follows:

II-a. ***“Indirect impacts” means reasonably foreseeable impacts to the following characteristics and functions of wetlands on or contiguous to the site of a project proposal, caused by those portions of a project proposal located in upland areas:***

(a) The ability of the wetlands and associated surface waters to meet and maintain state water quality standards, and to support and maintain a balanced, integrated, and adaptive community of organisms having a species composition, diversity, and functional organization comparable to that of similar natural habitats of the region;

(b) The ability of the wetlands to absorb flood waters and silt and to thereby avoid increased flood damage and silting of associated surface waters;

(c) The provision of habitat, food, and reproduction areas for finfish, crustacea, shellfish and wildlife of importance; and

(d) The recharge or discharge of groundwater.

II-b. “Local governing body” means “local governing body” as defined in RSA 672:6.

SENATOR FULLER CLARK: Thank you very much, Madam President. I move Senate Bill 435 ought to pass with amendment. This bill requires the Department of Environmental Services to consider direct and indirect impacts of project proposals on our wetlands. The New Hampshire Supreme Court in the *Greenland Conservation Commission, et al., vs. New Hampshire Wetlands Council*, held that the New Hampshire Department of Environmental Services lack the authority under the state wetlands statutes to assess secondary impacts to wetlands and aquatic resources. In order for DES to fulfill its obligations under the New Hampshire programmatic general permit, they must be able to assess and regulate not only the direct impacts of a proposed project, but also the indirect impacts. Senate Bill 435 will ensure that DES has the legal authority to review all the information it needs to make a complete and informed permitting decision, a decision it had the authority to make before the Supreme Court ruling in December of 2006. The amendment, which is in your Calendar on page 10, simply provides an answer to some of the concerns that we heard during the hearing about the fact that the language defining indirect impacts was not vague – was too vague and unclear. And here you have a very specific definition of what “indirect impacts” means. It means “reasonably foreseeable impacts to the following characteristics and functions of wetlands on or contingent [sic] to the site of a project proposal, caused by those portions of a project proposal” ... that could be located in the upland areas. And the reason for this is it needs to look at the ability of the wetlands and associated water services to meet and maintain state water qualities and to support and maintain a balanced, integrated and adaptive community of organisms and the diversity that is needed – I’m just short-changing this a little bit – with regard to the habitats of the region. But most importantly, it is the ability of the wetlands to absorb flood waters and silt, and to thereby avoid increased flood damage and

the silting of associated surface waters. And finally, they would review the impact with regard to habitat for the various wildlife in that area, and also to evaluate the recharge or discharge of groundwater.

Now, let me explain to you what would happen without this bill. DES would not be able to continue to review indirect impacts, and the result would be that we would see the further acceleration of the increased degradation of our water quality. We would see the loss of communities during severe storms – the loss of protection to communities during severe storms, resulting in increased damage to local communities and private development. And I can tell you that the communities on the Seacoast have experienced two devastating storms in the last two years where the flooding of roadways and runoff from driveways and rooftops, washed-out roads and bridges, had a severe economic impact on those communities as well as resulting in the destruction of private property. It is essential, as was contested in the *Greenland* case, that DES have the proper authority to regulate wetlands in New Hampshire. They are a crucial importance to the health and viability of our water resources and to the health and viability of our citizens who live in the communities that are threatened by inappropriate permitting and the resulting impact that I have just outlined for you. I urge you to allow this important policy to go forward.

There have been concerns that have been raised by the Department of Environmental Services that they may not have the ability, with regard to staff, to review both direct and indirect impacts. On the other hand, before the court decision in 2006, they were able to do that. And what we also need to understand is without that, without this statute, there are other problems that can occur, and that is that we are going to see that greater involvement from the federal government requiring developers to address regulatory reviews at both the state and federal level with greater frequency, because the federal level does require that indirect as well as direct impacts be evaluated. That could mean actually a delay in the granting of permits. There is nothing here that interferes with the Department's ability to grant these permits, but we are simply giving them back the authority that they had in the past so that they are able to consider all of the impacts before they allow a permit to go forward. And those concerns about whether or not the staffing is available and the costs to the Department are issues that should be dealt with in Finance. But it is clear to me, and it was clear to the majority of the members of our Committee, that we have an obligation in this state to ensure that we have complete and competent review of wetlands permits in order to protect both the economy and safety of our communities. And I speak especially on behalf of those communities that are within my district, North Hampton, Rye, Greenland, and many of the other adjacent communities on the Seacoast where all or so much of the existing developable land, without having to get permits, has already occurred. And what we are seeing is increased pressure for large-scale development to come into areas in those communities that have had significant impact on the quality of life for other individuals in those communities. So I urge you to pass this important policy and to leave the issues of whether or not the Department can afford to do this at this time to the Finance Committee. Thank you.

(The Chair recognized Sen. Reynolds for a question of Sen. Fuller Clark.)

SENATOR REYNOLDS: Sen. Clark, so in other words, what you're saying is without this statutory authority by the state agency, there's a greater chance that the Army Corps, the federal agency, will have to step in; is that correct?

SENATOR FULLER CLARK: Yes, I am. We heard that as part of the testimony, and that could result in increased delays to actually granting of the permits, 'cause we know that the federal government is not as efficient as the government of New Hampshire.

SENATOR REYNOLDS: Thank you, Senator. Thank you, Madam President.

(The Chair recognized Sen. Janeway to speak.)

SENATOR JANEWAY: Thank you, Madam President. I'm stepping a little out of character here because I'm bringing up something that grew out of a state Supreme Court decision. But that decision to which Sen. Clark referred represented a truly serious setback for wetland protection. And as she indicated, it wasn't so much a fault of the Court as it was the framing and wording of the particular RSA. I'm not sure how many people really appreciate the importance of wetlands, but since our current Commissioner is opposed to this, I would like to quote from a prior commissioner, Bob Varney, and what he said about wetlands. It's very brief. He says, "Unlike some landscapes that immediately demand our attention and awe, wetlands are sometimes easy to overlook or disregard. However, the importance wetlands play to the overall health of our environment is hard to overstate. Wetlands play a big role in ensuring clean and healthy drinking water, also acting as a natural sponge, to say nothing of all the creatures that reside within them." So that's from former Commissioner Varney. You've heard other opposition as well, much of which I think Sen. Clark has addressed. Further, to the Commissioner's case that this is all going to be dealt with in the review that that Department has underway which grew out of the Legislative audit, which apparently may take as long as two years, it sort of reminds me of my showing up at the doctor's office with a serious illness and being told come back – when you come back for your physical in six months or twelve months, we'll deal with it. This is an immediate problem and it deserves immediate attention. So I hope you will think about that and support us on this bill. Thank you.

(The Chair recognized Sen. Odell to speak.)

SENATOR ODELL: Thank you, Madam President. My journey to the State House started eight years ago in the little Town of Charlestown when the Department of Environmental Services was proposing, under the guise of wetland regulation, that a deer tunnel be put under Route 12. And that issue was so pervasive in terms of the public attention, and it helped convince me that that was maybe an appropriate time to run for the Legislature, and since that time I've spent eight years, often at odds with the Department of Environmental Services, but never to risk our wetlands. Never once. So Tom Burack and I've gone back and forth over and over again. And as Sen. Hassan knows, we had discussions during the budget phase, because I opposed for a while the doubling, the increasing of the fees, the regulatory fees. I supported their fee increases a couple of years ago when we basically doubled the fees. But I rise today to say what is the Senate doing, not working with our appointed officials, the Commissioner of the Department of Environmental Services? Is he untrustworthy? Do we not understand where he's going? I have his testimony here, and, Madam President, if I may, I'd like to just mention a couple of things, read a couple of things. Here's the Commissioner's statement: "In our opinion, the adoption of Senate Bill 435 would substantially inappropriately expand the regulatory jurisdiction of Wetlands' permitting program. It would

create standards for wetlands permit application evaluation that are too broad and ambiguous for clear and effective implementation by the DES Wetlands Bureau.” I continue: “The regulation of development projects, quote ‘in their entirety,’ end quote, is currently a municipal function that is addressed through planning boards and local land use board mixes.” I continue: “This bill would necessitate a significant increase in application fees as well as substantially longer application review timeframes. Consideration of fee increases is best undertaken in connection with the biennial budget process. For this reason, among many others, this bill is untimely and cannot be supported by DES.”

That’s our Commissioner telling us that it’s not appropriate to go outside of the budget at this time to try to hire people or to raise fees for the implementation of this legislation. He also considers it duplicative. He addresses the issue with the federal circumstances. State government should work together. Why are we pitting ourselves against the Department? Let’s pull this train along in a collaborative way, in a partnership. And I’ll close by reading his last paragraph: “DES has a strong interest in the broad policy questions raised by Senate Bill 435 concerning the impacts of development to both wetlands and uplands. However, we believe that prior to enacting this type of legislation a diverse stakeholder group with representatives from environmental, development and municipal interest, should be brought together to develop consensus on a clear set of environmental and development policy criteria to provide direction for New Hampshire’s future growth. DES is undertaking to convene such a stakeholders’ group within the next few months. It will help this committee be apprised of the status of this effort.” I think we should work together. I think that the goals of protecting our wetlands and our uplands is consistently held by all the members of the Senate. But to put ourselves in complete opposite position from a Commissioner that I think most of us respect, although from time to time he and I have rather heated discussions about some issues, I think would be an unfortunate step. So I’m going to oppose the ought-to-pass-with-amendment motion, and hopefully we can deal with this bill in some other way. Thank you, Madam President.

(The Chair recognized Sen. D’Allesandro to speak.)

SENATOR D’ALLESANDRO: Thank you, Madam President. I rise in opposition to the bill. I think the work done by the Committee should be applauded. They did good work. They do good work, but I think it’s the wrong time, there are too many stakeholders that weren’t included, and the staffing situation I think is something that we have to look at, given our budget constraints at the time. I think Sen. Odell made a wonderful point. Why do we appoint commissioners and ask them to do a job, they come and testify before us, and then we negate what they have testified. Are we better equipped to make these decisions than the Commissioner who we have – the Governor has appointed and who has been put in place to do the job? When the Commissioner says in his testimony, “Senate Bill 435 proposes to substantially broaden the State’s jurisdiction over wetlands regulation by providing new definitions for direct impact and indirect impacts of projected proposals. If enacted, Senate Bill 435 would require that DES base its permitting decisions on not only the direct measurable or predictable impacts to wetlands caused by the proposed dredging and filling activities, but also on the direct and indirect impacts caused to both wetlands and uplands by the project development plans taken in their entirety, including post construction users and operation.” The Commissioner looks forward to working *with* the Legislature and

working with those proponents. But it's a time situation and this is not the time for this particular situation. So on the basis of it's too early, all of the stakeholders weren't included, and the staffing situation, I oppose the bill. Thank you, Madam President.

(The Chair recognized Sen. Barnes to speak.)

SENATOR BARNES: Thank you, Madam President. As you can see by the report, it was a 4 to 1 vote out of committee, and you know who the "1" was, because I'm standing up talking about it. I also want to let this whole body know who other people who opposed this piece of legislation besides the Commissioner and his Department: National Grid, Associated General Contractors, New Hampshire Timberland Association, Homebuilders, Farm Bureau, New Hampshire Municipal Association, Associated General Contractors, Rene Pelletier. And you heard Commissioner Burack's statement that was read by Sen. Odell, and I want you to listen to this, one of his comments was: "Substantially longer application review." That is something the Committee and all of us have been fighting to have at a lower level than what it is. We're voting for something that's going to go against what we have been voting on in this body for a period of time. And this bill, according to the Commissioner, is "untimely." And I agree with the Commissioner. I don't always agree with the Commissioner, but I do on this one. He made a lot of sense when he came into the committee and testified. And I understand my four colleagues on the Committee made good sense and worked very hard on this, but I also oppose this, and I'd like to ask for a roll call.

Recess/Out of recess.

MOTION TO TABLE

Sen. Bragdon moved to have SB 435 laid on the table.

Motion failed.

(The Chair recognized Sen. Burling.)

PARLIAMENTARY INQUIRY

SENATOR BURLING: Thank you, Madam President. Madam President, I have what really constitutes a procedural request. If I favored the policy that is reflected in this bill, but had real concerns about the timing, some of the more complex issues, and the message we would be sending by contravening some of the explicit comments of our Commissioner, how would I get to get my concern out? Would it be to move, at some point, interim study? I'm interested in figuring out how we can get this back to committee where further work can be done and we do not wind up sending a negative message about the importance of the intellectual and substantive material that the Committee has worked so hard to bring us.

PRESIDENT LARSEN: Sen. Burling you can – if you support a motion of interim study, you would need to choose whether you're adopting the committee amendment, and then – so if you want to attach the committee amendment for study, you would vote yes on that motion. You would then have the question of the adoption of the committee amendment. The second question would be ought to pass as amended, and you would substitute a motion of – you would vote down the ought-to-pass as amended, which would then allow for a ... a substitute motion of interim study.

SENATOR BURLING: So as I understand, Madam President, if I was interested in supporting the policy discussion that is ongoing, I would vote yes to get the amendment attached to the bill. That would be on

the adoption of the amendment. I would then vote no on the ought to pass as amended, and then I would be prepared to pop back up and move interim study as the subsequent amendment [sic]?

PRESIDENT LARSEN: That is correct.

SENATOR BURLING: Thank you.

The question is on the adoption of Committee Amendment 0546s. Committee Amendment 0546s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 435.

Recess/Out of Recess.

The question is on the adoption of Ought to Pass as Amended on SB 435.

PARLIAMENTARY INQUIRY

SENATOR BURLING: Just to keep myself on focus, Madam President. If I'm concerned to get to the issue of interim study, the subsequent motion, would I now be voting no on ought to pass so I that I can then move yes on interim study?

PRESIDENT LARSEN: If you support a motion of interim study, you would vote no on ought to pass as amended and vote yes on the following motion.

The question is on the adoption of Ought to Pass as Amended on SB 435.

Motion of Ought to Pass as Amended failed.

Sen. Burling moved Interim Study.

The question is Refer to Interim Study on SB 435.

Motion to Refer to Interim Study adopted.

MOTION TO REMOVE FROM THE TABLE

Sen. Burling moved to have SCR 9 removed from the table.

Motion adopted.

SCR 9, urging Congress to fund a community-based outpatient clinic for veterans in Keene. Election Law and Internal Affairs Committee.

The question is on committee recommendation of Ought to Pass on SCR 9.

Sen. Burling offered a floor amendment.

Sen. Burling, Dist. 5

Sen. Cilley, Dist. 6

Sen. DeVries, Dist. 18

Sen. Gallus, Dist. 1

Sen. Letourneau, Dist. 19

February 21, 2008

2008-0767s

09/10

Floor Amendment to SCR 9

Amend the resolution by replacing all after the title with the following:

Whereas, the United States Department of Defense has approved a community-based outpatient clinic for veterans to be located in Keene; and

Whereas, such outpatient clinics already serve veterans in Portsmouth, Somersworth, Tilton, Conway, and Manchester; and

Whereas, veterans residing in Keene and surrounding communities who may be ill and elderly must now travel many miles to appointments at distant clinics, even for minor procedures, frequently spending whole days in travel; and

Whereas, the Keene area veterans frequently miss essential checkups and therapies because of inclement weather and lack of proper transportation; and

Whereas, veterans residing in the Keene area deserve the same level of care as veterans residing in other areas of the state; now, therefore, be it

Resolved by the Senate, the House of Representatives concurring:

That the New Hampshire general court urges Congress to fully fund a community-based outpatient clinic for veterans to be located in Keene, New Hampshire; and

That copies of this resolution be sent by the senate clerk to the Secretary of the Department of Defense and to each member of the New Hampshire congressional delegation.

SENATOR BURLING: I would like to offer a floor amendment at this time, Madam President. The floor amendment is 0767s. And if I may speak to that while it's being handed out, I can make clear that this bipartisan effort says what we want it to say.

PRESIDENT LARSEN: Thank you. You may speak to the Floor Amendment 0767s which has been proposed and is being distributed.

SENATOR BURLING: Thank you, Madam President. SCR 9 is a – this is a resolution that truly comes from the heart of all the members of our Committee. We heard the testimony of what our vets need to go through just in order to get the essential care that is their due and right. I mean, folks in Keene, they have to wait for a van that carries nine people. And if they're lucky, they can get a seat in that van and be driven all the way up to White River for their – you know, whatever their therapy or medication may be. If they are, for any reason, delayed and miss the van, they don't get their meds, they don't get their therapy. The amendment that's proposed here simply puts in a little more realistic language, if you will, the crisis that they face out there in Keene. And we want to send the strongest possible resolution which reflects our concern for these people and our determination to get them an outpatient clinic that they so desperately need. Thank you, Madam President.

(The Chair recognized Sen. Barnes to speak.)

SENATOR BARNES: Thank you, Madam President. Sen. Hassan and I are fortunate enough to sit on the State Veterans Advisory Council and every monthly meeting this issue comes up. So it is an important issue to the veterans' community from coast to coast, east to west, north to south in the State of New Hampshire. So I say let's move on and pass this and keep on rolling, and get the veterans taken care of in the western part of the state. The veterans would appreciate it on the Advisory Council. I'm sure Sen. Hassan, I think Sen. Hassan would probably agree with that.

(The Chair recognized Sen. Kenney to speak.)

SENATOR KENNEY: Thank you, Madam President. I rise in support of the amendment offered by the sponsors. I'm the sponsor of this bill, and actually Sen. Kelly should also be a sponsor. It was a last-minute ... I was approached by Rep. Roberts at the last minute to bring it in and it literally was at the last minute. So again, I apologize that you're not

on that bill, but I am sure that you would want to be on that bill. I'm in support of SCR 9 as amended. When the bipartisan Legislative Veterans Medical Taskforce visited Keene last fall at the American Legion Post 4, it was strongly expressed that the local veterans wanted their community out-patient clinic funded. When the U.S. Congress committed a CBOC to Keene, the local veterans expected follow-through in a responsive health-care delivery care system for the veterans. "A promise kept is a promise made." Keene and area veterans want the VA and the U.S. Congress to act now, not later. Rep. Roberts of Keene, along with four volunteers, have been instrumental in coordinating over 300 rides for 71 veterans to make over 415 medical appointments at the White River Junction for the past six months. The transportation program has expanded from less than 15 veterans to its current level by word of mouth, with the expected future growth. They have turned down requests because of lack of drivers; on two occasions, a veteran that required chemo treatment. All others who are drivers are 60 and over. They've had, again, to turn down requests because of lack of handicap vehicles. And many of the veterans are in their 60's and 70's, and some are older, and leave as early as 7 to 6, 6 to 7 a.m., sometimes earlier, and not returning until 4 and 5 p.m. in the afternoon. This is just not Keene. This is a delivery system statewide. That's why the SVAC, this particular independent taskforce, along with many other veterans around the state, want to see accessibility to our healthcare system, whether it's a full-service hospital, whether it's a CBOC that was committed in Keene four years ago, or whether it's a Vet Center in Berlin. We need to send – and it's been state legislatures across the country, and this Legislature, which I am so proud, that has sent a strong message to our federal delegation that we need to take care of our veterans, we need to have accessibility for 'em, we need to have the best healthcare delivery system. Because, ladies and gentlemen, we're still at war. We have this war called the "Global War on Terrorism" where some horrific injuries are coming back, and we need to take care of these veterans. This is a nonpartisan issue. And I just want to bring that out, because I think it's important that we, in the state government, need to lean on our federal officials to get the job done. Thank you, Madam President.

(The Chair recognized Sen. Letourneau.)

SENATOR LETOURNEAU: Thank you, Madam President. And I want to congratulate Sen. Kenney for bringing this bill forward and, indeed, when he did come before the Committee, he talked about it was a last-minute thing and that's why Sen. Kelly was not able to be on the bill. I guess it just happened that way. We heard the stories from the veterans, and you just heard the stories that Sen. Kenney told you about. But even on minor things like blood tests, some of these elderly veterans have to get on a bus at 8 o'clock in the morning, travel to White River Junction and get home at 6 o'clock at night for something as simple as a blood test. If they miss that bus, they can't get their cholesterol medicine because they didn't have that blood test. This is a really – even for the most minor procedures, it's important that they get this care. And that's what we were trying to do with this amendment, was to put that language in there so that our federal delegation understands that while the Keene area is in a remote part of the state, there are still a lot of veterans over there that need urgent and expedient care. And I thank all our colleagues for voting for this. And when we get to the final bill, I'd like a roll call on it.

The question is on the adoption of Floor Amendment 0767s.

Floor Amendment 0767s adopted.

The question is on the adoption of Ought to Pass as Amended on SCR 9.

A roll call was requested by Sen. Burling, seconded by Sen. Barnes.

The following Senators voted Yes: Gallus, Reynolds, Kenney, Sgambati, Burling, Cilley, Janeway, Odell, Roberge, Kelly, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, DeVries, Letourneau, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.

The following Senators voted No: None.

Yeas: 24 - Nays: 0

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

MOTION TO REMOVE FROM THE TABLE

Sen. Fuller Clark moved to have SB 403 removed from the table. Motion adopted.

Sen. Hassan asserted Rule 42 on SB 403.

SB 403, relative to large withdrawals of water from aquifers within municipal boundaries.

The question is on the committee recommendation of Inexpedient to Legislate.

(The Chair recognized Sen. Fuller Clark to speak to the legislation.)

SENATOR FULLER CLARK: Thank you very much, Madam President. I move Senate Bill 403 inexpedient to legislate. This bill would permit municipalities to deny large withdrawals of water from aquifers within municipal boundaries. The State currently has a highly respected permitting process. The Committee believes that this bill would result in a fundamental shift in resource management and could have unintended consequences with regard to how we manage the state's water resources. Therefore, the Committee recommends inexpedient to legislate. However, Madam President, I would now ask this body to overturn the Committee's recommendation so that Sen. Cilley may bring forth a floor amendment.

The question is on the adoption of the committee recommendation of Inexpedient to Legislate on SB 403.

Motion of Inexpedient to Legislate failed.

Sen. Hassan asserted Rule 42 on SB 403.

PRESIDENT LARSEN: Senator Cilley, would you like to offer a new motion of ought to pass as amended? Ought to pass, I'm sorry, which allows you to amend a bill.

SENATOR CILLEY: Yes, Madam President. I would indeed like to make a motion of ought to pass with the floor amendment that I am about to offer if we get this motion through.

Sen. Cilley moved Ought to Pass.

PARLIAMENTARY INQUIRY

SENATOR BURLING: Would I be correct in understanding that having killed the first motion, we now have to have a main motion on the floor and that would be ought to pass, and if that passed, then we could accept a floor amendment? No?

PRESIDENT LARSEN: We have a motion of ought to pass already made. During that process the bill is on second reading. I have to say that the bill – Senate Bill 403 is now on second reading and open for further amendment, at which point we can have a floor amendment offered. So Senate Bill 403 is now on second reading and open for further discussion or amendment. And, Senator Cilley.

Sen. Cilley offered a floor amendment.

Sen. Cilley, Dist. 6

Sen. Barnes, Dist. 17

February 14, 2008

2008-0603s

06/01

Floor Amendment to SB 403

Amend the title of the bill by replacing it with the following:

AN ACT relative to the commission to study issues relative to groundwater withdrawals.

Amend the bill by replacing all after the enacting clause with the following:

1 Commission to Study Issues Relative to Groundwater Withdrawals; Duties Expanded. Amend 2003, 305.3 to read as follows:

305:3 Duties. The commission shall study ways to bring a balanced approach to water use among residential, public water supply, industrial, commercial, agricultural, energy, recreational, and other water users, and to improve the current process by which new water users may reasonably and efficiently use state water resources, including consideration of potential regional impacts and local water management issues, in order to best protect and preserve an adequate supply of water for the state with particular attention to groundwater. This study shall include consideration of issues such as potential impacts on New Hampshire's environment, property rights as they relate to groundwater, possible fees on water withdrawals, and the protection of New Hampshire's aquifers. ***Consideration of these issues shall include appropriate roles for municipalities in the permitting and regulation of large groundwater withdrawals and shall include input from municipalities and other entities.*** The commission may address other issues related to water.

2 Commission to Study Issues Relative to Groundwater Withdrawals; Reporting Date Extended. Amend 2003, 305:5 as amended by 2005, 287:1 to read as follows:

305:5 Report. The commission shall make an interim report of its findings and any recommendations for proposed legislation to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2003. The commission shall make additional interim reports of its findings and any recommendations for proposed legislation to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 30 of each year, with the final report ***on the roles of municipalities in permitting and regulation of large groundwater withdrawals*** due on or before November 30, 2008 and ***the balance of the final report due on or before November 30, 2010.*** The senate ***energy***, environment, and [wildlife] ***economic development*** committee and the house resources, recreation and development committee shall have oversight responsibility for the progress of the commission and shall receive copies of all interim reports.

3 Effective Date. This act shall take effect upon its passage.

2008-0603s**AMENDED ANALYSIS**

This bill:

I. Expands the duties of the commission to study issues relative to groundwater withdrawals.

II. Extends the date of the final report.

SENATOR CILLEY: Thank you, Madam President. I would like to offer Floor Amendment 2008-0603s.

PRESIDENT LARSEN: Floor Amendment 0603s has been proposed. You may speak to that motion as it's being distributed.

SENATOR CILLEY: Thank you, Madam President. The issue of community involvement in the large groundwater withdrawal process has been one that's been before the Legislature practically since 1998 when this law took effect. And I'd like, for the body's information, to read a couple of passages from the statement of purpose of RSA 485-C, which is the law that governs our large groundwater withdrawal permits. First of all, it starts off, "The purpose of this chapter is to protect the natural quality of groundwater resource of the state by assisting local groundwater protection efforts." It goes on to state in another passage, "The Legislature recognizes the fundamental importance of groundwater resource and the role of local planning and management in groundwater protection." Further on it says, "Because groundwater is primarily a local resource, cities and towns should have the first opportunity to institute programs for groundwater protection within the scope of this chapter." Throughout this 485-C there are references to the public interest and to local involvement. Many of our communities, and I hear this from mine in my district, and we are hearing them increasingly from communities throughout the district, are calling for a role of – a strengthened role in this process. The bill that we had before us, the original SB 403, fell short in a number of ways in satisfying the Department of Environmental Services and other constituency groups in its ability to be implemented. The amendment that I'm asking for is to send this to the SB 155 Commission for further study and to report out in November of 2008, to help us to resolve this ongoing problem. Thank you.

The question is on the adoption of Floor Amendment 0603s.

Floor Amendment 0603s adopted.

Sen. Hassan asserted Rule 42 on SB 403.

(The Chair recognized Sen. Letourneau for a question of Sen. Cilley.)

SENATOR LETOURNEAU: Thank you, Sen. Cilley. I, just having seen this, I'm trying to understand what it means. And it says, in the black lettering here, on line 17, it says "Consideration of this issues shall include appropriate roles for municipalities in permitting and regulating [sic] large groundwater withdrawals ..." Is that an effort to take away local control on these issues?

SENATOR CILLEY: Not at all. In fact, what we're hoping is that the SB 155 Commission will, in the areas that the municipalities do not feel that they currently have a strong enough role in the permitting process, to look at ways that we can do that.

SENATOR LETOURNEAU: Thank you.

SENATOR CILLEY: You're welcome.

The question is on the adoption of Ought to Pass as Amended on SB 403.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

Sen. Hassan asserted Rule 42 on SB 403.

SB 305-FN, relative to the regulation of private investigators. Executive Departments and Administration Committee. Inexpedient to Legislate, Vote 4-0. Senator Burling for the committee.

SENATOR BURLING: Thank you, Madam President. Madam President, I move Senate Bill 305-FN inexpedient to legislate. Your Committee heard extensive testimony about the profession of private investigators and the important role played by that profession in the protection of the public of our state. The Committee heard testimony regarding the concern for safeguarding the public from dishonest self-proclaimed investigators. The bill proposes an extensive and complex licensing process and imposes a whole realm of supervisory duties on the Department of Justice, which raised concern for many members of the Committee. Several different professions are affected by the private investigation industry and it is important to consider all of their input. Your Committee unanimously feels that there is work still to be done in this area and that all interested parties need to come together to assure an appropriate piece of legislation. We ask that you join the ED&A Committee motion of inexpedient to legislate. Thank you, Madam President.

(The Chair recognized Sen. Clegg to speak.)

SENATOR CLEGG: Thank you, Madam President. I rise to thank the Committee for the work that they did do and for their understanding. I put the bill in on behalf of some women's groups, especially a stalking group, who found that the private investigator issue in the State of New Hampshire needs a little more oversight. And to point that out, in e-mails that went through before this bill ever came to the Senate Committee, the head of the Investigators' League, sent out an e-mail saying he'd called me numerous times and I had never returned his call. And I can tell you that the young lady that's in my office doesn't miss a call, doesn't miss a message. It's never been done. I also met with a member or a private investigator in the State of New Hampshire and I agreed to a number of issues that they had with the bill, only to find out after he left my office, he wrote and said, "Sen. Clegg refuses to deal with us, to talk to us, and says he knows more about private eyes than anybody else." That never happened, and again, I had a witness. The best part is, just the other day I got a phone call from someone who's in the private investigator business, also a state Rep., who said to me, "I'll never speak to you again, because I called to discuss this bill with you. I spoke to your girl, Shannon, and you weren't here, so she put me over to your voice mail and you never returned my call." Well, for the record, I don't have voice mail. These are the type of people – that's three private investigators that are supposed to be held in high regard in the industry – that's the kind of work they do. Now, if they're going to lie about the Senate work we do here, what are they doing on the outside? So I thank the Committee for taking their time. I agree that this isn't the right bill, but I want us to ever be – be ever vigilant over a community that thinks it's okay to spread lies, be deceitful, do anything they can to gain the information in what they need from us. And there are a whole lot of women organizations who are fed up with private investigators for

a few bucks, tracking down license plates and home addresses so that women can be stalked, and in some cases, killed, is what happened in the City of Nashua. So again, I thank my colleagues for their work and I will be supporting the committee amendment [sic].

The question is on the adoption of committee recommendation of Inexpedient to Legislate on SB 305-FN.

Motion of Inexpedient to Legislate adopted.

SB 314-FN, relative to the use of certain prior service credit in the retirement system for purposes of eligibility for medical benefits. Executive Departments and Administration Committee. Interim Study, Vote 4-0. Senator Burling for the committee.

SENATOR BURLING: Thank you, Madam President. Madam President, I move Senate Bill 314-FN to interim study. Your Committee came to that decision after hearing a lot of testimony about what I can only describe as individual employees of towns that tried to move into the retirement system just a few years ago and how those employees have suffered a failure of their expectations, shall we say, relative to medical benefits and the medical subsidy. Your Committee felt that we are struggling mightily with the issue of providing medical subsidies and health benefits to our retirees. We are in the middle of that process. We really believe that trying to fix the failed expectations of a small number of employees, while we're really confronted with the overall problem of what do we do for the 20,000 plus employees and retired people whose medical benefits are at question, we felt it would be inexpedient to go forward with this bill at this time, but we wish to retain the bill for further work. We ask that you support us in interim study. Thank you, Madam President.

The question is on the committee recommendation of Refer to Interim Study.

Motion of Refer to Interim Study adopted.

SB 322, relative to lists of professional bondsmen. Executive Departments and Administration Committee. Ought to Pass, Vote 4-0. Senator Downing for the committee.

SENATOR DOWNING: Thank you, Madam President. I move Senate Bill 322 ought to pass. This bill requires courts, jails, and police stations to post lists of professional bondsmen. This list will be created by the Secretary of State's Office who will be responsible for the licensing and regulations of bondsmen. This piece of legislation will prevent other businesses from creating their own list of professional bondsmen and altering the list to their own satisfaction to benefit their own business. The Secretary of State's Office will update the list as necessary and it will be displayed prominently to defendants in courts, jails and police stations. Please join the ED&A Committee ought to pass.

The question is on the adoption of committee recommendation of Ought to Pass on SB 322.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 327-FN, relative to compensation for state employees injured in the line of duty. Executive Departments and Administration Committee. Ought to Pass with Amendment, Vote 4-0. Senator Cilley for the committee.

**Senate Executive Departments and Administration
February 11, 2008
2008-0497s
05/01**

Amendment to SB 327-FN

Amend the bill by replacing section 1 with the following:

1 Compensation for State Employees Injured in the Line of Duty. Amend RSA 21-I:43-a to read as follows:

21-I:43-a Compensation for State Employees Injured in Line of Duty. Any injury received by any state employee who is injured in the line of duty by a hostile or overt act or an act caused by another during the performance of duties which are considered dangerous in nature that requires the employee to be hospitalized or renders the employee temporarily unable to perform the duties of his or her position shall not be charged against annual leave or sick leave for the time lost due to the injury. During such time, the employee shall remain on the active payroll. *In the event of permanent disability, no employee shall be terminated from state service until he or she has applied for disability retirement and a final decision on the application is made by the board of trustees of the New Hampshire retirement system and appeals of such decision, if any, are finalized; provided, that the employee shall make such application within 18 months of the injury contemplated by this section.* The executive head of the employee's agency shall make the determination as to whether an injury is in the line of duty and due to a hostile or overt act, or an act caused by another during the performance of duties which are considered dangerous in nature, and, after approval by the governor and council, the determination shall be final. The compensation provided for in this section shall be in addition to any other compensation or remedy available to the employee, *including workers' compensation.*

2008-0497s

AMENDED ANALYSIS

This bill specifies that if a state employee is injured in the line of duty and is permanently disabled, the employee shall not be terminated from state service until he or she has applied for disability retirement and a final decision on the application is made and all appeals are finalized.

SENATOR CILLEY: Thank you, Madam President. I move Senate Bill 327 ought to pass with amendment. This bill specifies that if a state employee is injured in the line of duty and is permanently disabled, that the employee will not be terminated from their state service until he or she has applied for disability retirement and the application has been acted on. The employee shall remain on active payroll until the final decision of the application is made by the board of trustees of the New Hampshire Retirement System. The intent of this bill is to fill the gaps and to protect New Hampshire employees. Please join the ED&A Committee ought to pass with amendment. Thank you, Madam President.

The question is on the adoption of Committee Amendment 0497s.

(The Chair recognized Sen. Hassan to speak.)

SENATOR HASSAN: Thank you, Madam President. I brought this bill in because of a situation that happened with one of my constituents who was, in fact, seriously injured by a reckless driver in the breakdown lane of Route 101 while my constituent, Tim Copeland, was acting as an officer of the Liquor Commission in a traffic stop. And what we discovered

with his process through the system was that there was an ambiguity in the current personnel rules that made it difficult for him to continue his income while awaiting his disability retirement determination. This bill is intended to remedy that situation, I think it does that. I want to bring to the members' attention that the committee amendment we thought was going to deal with the issue of whether the employee should be able to get both their ongoing pay while waiting for the determination on their retirement, and in addition, workers' comp. benefits. I believe it was the intention of the Committee not to allow the employee to recover both things. So because this bill is going to go to Finance, I would urge the members here to vote for this bill, and also as a member of the Finance Committee, I'll ask my colleagues there to look very closely at that issue of whether, as currently drafted, this would allow people to get two sources of benefits when our intent is only to allow them to get one, and I think we can fix that in the Finance Committee. Thank you.

(The Chair recognized Sen. Gatsas for a question of Sen. Hassan.)

SENATOR GATSAS: Senator Hassan, I'm not sure if you're familiar, but there is a Supreme Court ruling that dealt with an employee in the City of Manchester that not only was it a "double dip" but it was a "triple dip," because normally you would have to pay back your sick time to the bank once you got your workers' comp. The Supreme Court said not only do you not have to pay back the sick time, but the city has to reimburse you for that sick time. So really it's a triple dip. So I'd ask Finance if you would look at all of 'em.

SENATOR HASSAN: Certainly. And I just want to say that I do not think that any of our state employees intend to in some way be unfair to the system. I've never liked the term "double-" or "triple-dipping," because I think it implies a negative intent on the part of the employees. But certainly we want to be fair to everybody involved and we will look at those issues. Thank you.

SENATOR GATSAS: And there was no intent that employees do that, but it's happened.

SENATOR HASSAN: And I understood that. I just want us to be clear. Thank you.

SENATOR GATSAS: Thank you.

**The question is on the adoption of Committee Amendment 0497s.
Committee Amendment 0497s adopted.**

**The question is on the adoption of Ought to Pass as Amended
on SB 327-FN.**

Motion of Ought to Pass as Amended adopted, bill ordered to Committee on Finance (Rule 26).

SB 346-FN, relative to the regulation of fuel gas fitters by the state fire marshal. Executive Departments and Administration Committee. Ought to Pass with Amendment, Vote 4-0. Senator Burling for the committee.

Senate Executive Departments and Administration

February 14, 2008

2008-0599s

10/05

Amendment to SB 346-FN

Amend RSA 153:29-a, I as inserted by section 2 of the bill by replacing it with the following:

I. The commissioner may issue a business entity a fuel gas fitter license without examination or continuing education requirements to corporations, partnerships, or limited liability companies engaged in fuel gas fitting, provided one or more officers of the corporation, or designee, or one or more members of the partnership, or designee, or one or more managing members of the limited liability company, or designee, hold an active and current license as a liquefied propane service technician or natural gas service technician under this subdivision. Within 30 days after the death or withdrawal of the licensed person as a corporate officer, or designee, or member of the partnership, or designee, or one or more managing members of the limited liability company, or designee, the licensed person, corporation, partnership, or limited liability company shall give notice thereof to the commissioner and, if no other officer, partner, manager or designee, is licensed as a liquefied propane service technician or natural gas service technician, the corporation, or partnership, or limited liability company shall not act as a fuel gas fitter until some other officer, member, or designee, has obtained a license as a liquefied propane service technician or natural gas service technician. Notwithstanding any other provision of law, the commissioner shall not require a fee for a corporation engaged in fuel gas fitting where a licensed liquefied propane service technician or natural gas service technician is the sole shareholder of the corporation.

SENATOR BURLING: Thank you, Madam President. I move Senate Bill 346 ought to pass with amendment. This bill allows for the issuance of a business entity gas fitter license by the Fire Marshal's Office. Once again, the bill was the subject of intense work by all the parties at interest. Thank goodness they did it on their own and then brought their work product through the Fire Marshal's Office to us. The Fire Marshal presented the final proposal which we adopted. It's a very good piece of work, and it essentially allows the Fire Marshal to issue business entity licenses. It requires, of course, and will continue to require, that the person who has his or her hand on the piping or anything else to do with gas fitting, will have their own professional license. The Committee urges your support for Senate Bill 346 ought to pass with amendment.

The question is on the adoption of Committee Amendment 0599s.

Committee Amendment 0599s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 346-FN.

Motion of Ought to Pass as Amended adopted, bill ordered to Committee on Finance (Rule 26).

SB 347, establishing a commission to study making changes to the New Hampshire accountancy act. Executive Departments and Administration Committee. Ought to Pass with Amendment, Vote 4-0. Senator Kelly for the committee.

**Senate Executive Departments and Administration
February 14, 2008
2008-0597s
10/03**

Amendment to SB 347

Amend paragraph I of section 2 of the bill by replacing it with the following:

I. The members of the commission shall be as follows:

(a) One member of the senate, appointed by the president of the senate.

(b) Two members of the house of representatives, appointed by the speaker of the house of representatives.

(c) Two representatives of the New Hampshire Society of Certified Public Accountants, appointed by the organization.

(d) Two members of the New Hampshire board of accountancy, appointed by the board.

(e) One public member, appointed by the governor.

SENATOR KELLY: Thank you, Madam President. I move Senate Bill 347 ought to pass with amendment. This bill establishes a commission to the study of making changes to the New Hampshire Accountancy Act, RSA 309-B. This commission will promote improved reliability of information used for guidance in accounting, financial transactions, and assessing financial status and performance of many different enterprises. The amendment clarifies the composition of the commission to include members from the Senate and House, New Hampshire Society of Certified Public Accountants, and the New Hampshire Board of Accountancy. Please join the ED&A Committee in ought to pass with amendment. Thank you, Madam President.

The question is on the adoption of Committee Amendment 0597s.

Committee Amendment 0597s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 347.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 348-FN, relative to the certification of forensic counselors by the board of forensic counselors. Executive Departments and Administration Committee. Ought to Pass with Amendment, Vote 2-0. Senator Fuller Clark for the committee.

Senate Executive Departments and Administration

February 13, 2008

2008-0594s

08/10

Amendment to SB 348-FN

Amend the bill by replacing all after the enacting clause with the following:

1 New Chapter; Forensic Counselors. Amend RSA by inserting after chapter 611-B the following new chapter:

CHAPTER 611-C

FORENSIC COUNSELORS

611-C:1 Definitions. In this chapter:

I. "Certified forensic counselor" means any person certified under this chapter who offers assessment, evaluation, and counseling services, in return for compensation, to any person who is arrested or convicted of a felony or misdemeanor.

II. "Consulting" means interpreting or reporting scientific fact or theory in counseling and providing assistance to the criminal justice system, legal profession, corrections, individuals, groups, or organizations in solving problems related to criminal behaviors.

III. "Forensic counseling" means:

(a) Applying scientific principles to questions and issues relating to law, the legal system, and the adversary process through assessment, consultation, diagnosis, treatment planning, and counseling;

(b) Developing an understanding of criminals, criminal behavioral problems, and chronic criminal offenses;

(c) Preventing, diagnosing, and treating developmental, emotional, or behavioral problems, which cause criminal behavior;

(d) Conducting assessment and diagnoses for the purpose of establishing treatment, treatment goals, and objectives for offenders; and

(e) Planning, implementing, or evaluating treatment plans using professional counseling treatment interventions.

IV. "Supervised work experience" means voluntary or paid work experience in which counseling or education services are provided to offenders preferably under the supervision of a clinically certified forensic counselor or a licensed professional in the department of health and human services.

611-C:2 Board.

I. There is hereby established a board of forensic counselors, consisting of the following members:

(a) Four members appointed by the governor with the consent of the council, who shall be members of the board of the New Hampshire chapter of the American Board of Forensic Counselors.

(b) One member of the public, appointed by the governor with the consent of the council.

II. The board shall elect its own chairperson every 2 years by a majority vote.

611-C:3 Fees. The board may establish fees under RSA 541-A for applications, certification, conditional certification, renewal of certification, temporary renewal of certification, and reinstatement of certification.

611-C:4 Certified Forensic Counselors.

I. Any person who practices and specializes in forensic counseling and provides services to criminal offenders may obtain certification as a certified forensic counselor (CFC) or clinically certified forensic counselor.

(a) To qualify as a certified forensic counselor a person shall either:

(1) Hold a bachelor's degree and meet the credentialing requirements set by National Association of Forensic Counselors; or

(2) Hold a high school diploma and currently have 5 years experience working in the field of forensic counseling and meet the requirements of RSA 611-C:5, I(c) and (d).

(b) To qualify as a clinically certified forensic counselor a person shall hold a master's degree or be licensed in a behavioral science or related field and meet the credentialing requirements set by the National Association of Forensic Counselors.

(c) Both a certified forensic counselor and a clinically certified forensic counselor shall pass a written examination based on national standards established by the National Association of Forensic Counselors and its certification commission, the American College of Certified Forensic Counselors.

(d) A certified forensic counselor and a clinically certified forensic counselor shall:

(1) Provide 3 letters of recommendation from licensed professionals attesting to forensic counseling competence, ethics, and character. One of those letters shall be from a past or present supervisor.

(2) Complete both a state and a national criminal background check. If the applicant has previously been convicted of a sexual or violent offense, the New Hampshire board of forensic counselors shall conduct a review and determine the suitability of the applicant.

(3) Have completed at least 2 years or 4,000 hours, of full-time supervised work experience with criminal offenders within the past 5 years.

(4) Have successfully completed at least 290 hours of education related to forensic counseling, and its theory, practice, or research.

(5) Have successfully completed at least 500 hours of supervised experience and practicum in treating criminal offenders.

(6) Have successfully completed 270 hours of alcohol and drug abuse education.

(7) Have successfully completed 24 hours of education in legal issues and ethics pertaining to criminal justice and correctional clients.

(8) Have completed 50 hours of education or completed the department of health and human services, division of public health services STD/HIV prevention program in recognizing and working with clients who are at risk for HIV/AIDS and sexually transmitted diseases.

(e) A person working with criminal offenders in a defined capacity without receiving the appropriate certification from the state board may continue to do so, but shall not:

(1) Represent himself or herself by the title "certified forensic counselor" or "clinically certified forensic counselor";

(2) Use the title "certified forensic counselor" or "clinically certified forensic counselor" or any other name, style, or description denoting that the person is certified as a forensic counselor;

(3) Advertise or otherwise offer to perform forensic counseling or related forensic services as a certified forensic counselor or clinically certified forensic counselor.

II. Failure to renew a certification shall result in the forfeiture of the rights and privileges granted by the certification.

III. A person presently practicing as a National Association of Forensic Counselors certified forensic counselor or clinically certified forensic counselor shall be awarded a state certification upon the effective date of this act.

2 Effective Date. This act shall take effect July 1, 2008.

2008-0594s

AMENDED ANALYSIS

This bill:

I. Establishes a state board of forensic counselors.

II. Establishes a voluntary certification program for certified counselors and clinically certified forensic counselors.

SENATOR FULLER CLARK: Thank you very much, Madam President. I move Senate Bill 347 [sic] ought to pass with amendment. This bill provides for a state certification program for all forensic counselors. The Committee heard from the Department of Corrections as well as many other individuals that support ...with support for this legislation because it would improve the quality of care in the treatment of offenders and potentially reduce the likelihood of recidivism for these offenders. The amendment rewrites the original bill to provide for the fact that the certification process will be entirely voluntary. Please join the ED&A Committee in ought to pass with amendment. Thank you, Madam President.

The question is on the adoption of Committee Amendment 0594s.

Committee Amendment 0594s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 348-FN.

Motion of Ought to Pass as Amended adopted, bill ordered to Committee on Finance (Rule 26).

SB 372, relative to the state building code and the membership of the heating system certification advisory committee. Executive Departments and Administration Committee. Ought to Pass with Amendment, Vote 4-0. Senator Downing for the committee.

Senate Executive Departments and Administration

February 13, 2008

2008-0595s

05/03

Amendment to SB 372

Amend the title of the bill by replacing it with the following:

AN ACT relative to membership of the heating system certification advisory committee.

Amend the bill by deleting section 1 and renumbering the original section 2-3 to read as 1-2, respectively.

2008-0595s

AMENDED ANALYSIS

This bill adds 2 members to the heating system certification advisory committee.

SENATOR DOWNING: Thank you, Madam President. I move Senate Bill 372 ought to pass with amendment. The Committee amended the bill to delete section 1 which contained the language dealing with the codes. Due to a lack of consensus, the Committee felt more time was needed to address that aspect of the bill. The bill as amended retains the original sections 2 and 3, which adds two seats to the Advisory Committee on Heating System Certification in order to provide a formal voice for the Plumbing, Fuel Gas Fitters and HVAC Association. Please join the ED&A Committee in ought to pass with amendment. Thank you.

The question is on the adoption of Committee Amendment 0595s.

Committee Amendment 0595s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 372.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 410, relative to the conditions for issuance of a death certificate. Executive Departments and Administration Committee. Ought to Pass with Amendment, Vote 4-0. Senator Fuller Clark for the committee.

Senate Executive Departments and Administration

February 14, 2008

2008-0607s

01/09

Amendment to SB 410

Amend the title of the bill by replacing it with the following:

AN ACT relative to the conditions for issuance of a cremation certificate and relative to the medical examiner's statute.

Amend the bill by replacing all after section 1 with the following:

2 New Section; Medical Records. Amend RSA 611-B by inserting after section 14 the following new section:

611-B:14-a Medical Records. For the purpose of any medical examination into the cause and manner of death, and where medical treatment

has been provided to the decedent who is the subject of the examination, upon written request of the supervising medical examiner any individual, partnership, association, corporation, institution, or governmental entity which has rendered such treatment shall provide the supervising medical examiner with all medical records pertaining to the decedent and the treatment rendered. This section shall not preclude the supervising medical examiner from directly inspecting or obtaining any medical records pertaining to a case under the jurisdiction of the chief medical examiner. The records shall be promptly provided to the supervising medical examiner. When the records are incorporated into the files of the medical examiner or the office of the chief medical examiner, they shall be confidential and shall not be available for public inspection.

3 Assistant Deputy Medical Examiner Accounts. Amend RSA 611-B:27, I to read as follows:

I. Assistant deputy medical examiners shall be paid at the following rates: telephone consultations—\$25; death investigations involving an external examination of the body—~~[\$125]~~ **\$140**, plus mileage at the state rate; pre-cremation examinations conducted pursuant to RSA 325-A:18—\$50.

4 Effective Date. This act shall take effect upon its passage.

2008-0607s

AMENDED ANALYSIS

This bill clarifies when a medical examiner's certificate may be issued for a death which occurred within the state but the body is being transferred out of state for cremation.

This bill also makes a technical correction to the medical examiner's statute and increases the fee for external examinations of a body during a death investigation.

SENATOR FULLER CLARK: Thank you, Madam President. I move Senate Bill 410 ought to pass with amendment. The amendment gives a new title to the bill relative to the conditions for insurance of cremation certificate and relative to the medical examiner's statute. This piece of legislation provides clarification when a medical examiner's certificate may be issued for a death that occurs within the state, but the body is being transferred out of state for cremation. For the purpose of any medical examination into the manner of death and where medical treatment has been provided, the records will be provided to the supervising medical examiner and incorporated into the files of the medical examiner and be confidential from public inspection. In addition, the Assistant Deputy Medical Examiner will be paid at the following rates pursuant to RSA 325-A:18. Please join the ED&A Committee ought to pass with amendment. Thank you very much, Madam President.

**The question is on the adoption of Committee Amendment 0607s.
Committee Amendment 0607s adopted.**

The question is on the adoption of Ought to Pass as Amended on SB 410.

Motion of Ought to Pass as Amended adopted, bill ordered to Committee on Finance (Rule 26).

SB 430, relative to cemeteries and mausoleums. Executive Departments and Administration Committee. Ought to Pass with Amendment, Vote 4-0. Senator Downing for the committee.

Senate Executive Departments and Administration
February 14, 2008
2008-0596s
08/10

Amendment to SB 430

Amend RSA 289:1, I-III as inserted by section 1 of the bill by replacing it with the following:

I. "Burial ground" means a private *family* cemetery *or religious institution's cemetery* on private property and not available for use by the public. *For purposes of this paragraph, the term "family" shall mean members of the immediate family and any individuals related by blood or marriage or civil union to members of the immediate family.*

II. "Burial space" means a lot in any cemetery as designed and intended for the interment of a human body or bodies, but presently not used for such purpose.

III. "Cemetery" means any cemetery owned, managed, or controlled by any municipality within this state or owned and managed by any *non-profit* cemetery corporation chartered by the state. *Mausoleums and columbariums shall be included within the term "cemetery."*

SENATOR DOWNING: Thank you, Madam President. I move Senate Bill 430 ought to pass with amendment. This bill changes the definitions relative to cemeteries and mausoleums. The amendment gives clarification for burial ground purposes and the meaning of a private family cemetery. And the bill clarifies for the purpose of definition, the term "family," as it relates to access to the burial property. Please join the ED&A Committee ought to pass with amendment.

The question is on the adoption of Committee Amendment 0596s.

Committee Amendment 0596s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 430.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 428, establishing a commission to study the funding of vaccines for children who are not covered by private health insurance and repealing an assessment for the cost of vaccines. Health and Human Services Committee. Ought to Pass with Amendment, Vote 5-0. Senator Kenney for the committee.

Health and Human Services

February 12, 2008

2008-0559s

01/09

Amendment to SB 428

Amend the title of the bill by replacing it with the following:

AN ACT establishing a commission to study the funding of vaccines for children who are not covered by private health insurance.

Amend the bill by replacing section 3 with the following:

3 Duties. The commission shall study funding of vaccines for children not covered by private health insurance. The commission shall identify long-term funding sources, in lieu of the additional assessment levied

pursuant to RSA 126-Q:4, III, to fund the cost of vaccines for children not covered by private health insurance and for which federal reimbursement is not available.

Amend the bill by replacing all after section 5 with the following:

6 Effective Date. This act shall take effect upon its passage.

2008-0559s

AMENDED ANALYSIS

This bill establishes a commission to study the funding of vaccines for children who are not covered by private health insurance.

SENATOR KENNEY: Thank you, Madam President. I move Senate Bill 428 ought to pass with amendment. This bill establishes a commission to study the funding of vaccines for children who are not covered by private health insurance. This bill, as amended, eliminates language requiring New Hampshire Vaccine Association to pay the State a certain amount if the total calculated cost to be received is less than the anticipated cost. In 2002, a study commission created the Vaccine Association which was established to protect New Hampshire children and to ensure their ability to receive free vaccines. This bill should be looked at as beneficial to the health and safety of New Hampshire children and not as a way to penalize private insurers. With the increased numbers of vaccines, insurance companies have been footing an even higher tab for the costs of vaccinating all the New Hampshire children. The Committee heard a great deal of testimony in support of the establishing the study commission to find the best possible way to keep all our children safe, healthy and receiving all the necessary vaccinations. Please join the Health and Human Services Committee in voting Senate Bill 428 ought to pass with amendment. Thank you, Madam President.

The question is on the adoption of Committee Amendment 0559s.

Committee Amendment 0559s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 428.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 509-FN, requiring tobacco cessation therapy under the state Medicaid program. Health and Human Services Committee. Ought to Pass with Amendment, Vote 5-0. Senator Fuller Clark for the committee.

Sen. Sgambati, Dist. 4

February 12, 2008

2008-0525s

05/04

Amendment to SB 509-FN

Amend the bill by replacing section 1 with the following:

1 New Section; State Medicaid Program; Tobacco Cessation Therapy. Amend RSA 167 by inserting after section 3-h the following new section:

167:3-g Tobacco Cessation Therapy. The general court recognizes the health and economic benefits to the state of New Hampshire and its citizens occasioned by smoking cessation. Accordingly, the commissioner of department of health and human services is directed to provide scientifically-based and dynamic smoking cessation benefits to recipients of medical assistance that comport with the provisions and limits of Title XIX of the Social Security Act .

SENATOR FULLER CLARK: Thank you very much, Madam President. I move Senate Bill 409-FN [sic] ought to pass with amendment. 409? I'm sorry, 509-FN ought to pass with amendment. 509. Are we correct? Thank you, I'm sorry. This bill requires the state Medicaid Program to cover tobacco cessation therapies. There has been some discussion as to whether or not without this bill that would be the case. Currently in New Hampshire there are 115 million [sic] smoking-related illnesses and diseases that are currently being treated. By implementing policies and addressing the very ... it must be a hundred "thousand," I'm sorry. In New Hampshire there are currently 115,000 smoking-related illnesses and diseases that are treated each year. By implementing policies and addressing the very serious issues caused by smoking or exposure to secondhand smoke, this number would be significantly reduced and the health and well-being of many people would be greatly enhanced. The problem with smoking cessation tactics is that counseling and other methods are typically very expensive and the majority of smokers are people who can least afford to smoke, let alone pay for the practices of smoking cessation. The Medicaid Program, in the long run, would save money by catching these addictions and treating individuals before their long-term health becomes too damaged to repair. Please join the Health and Human Services Committee in voting Senate Bill 509 ought to pass with amendment. Thank you very much, Madam President.

**The question is on the adoption of Committee Amendment 0525s.
Committee Amendment 0525s adopted.**

**The question is on the adoption of Ought to Pass as Amended
on SB 509-FN.**

**Motion of Ought to Pass as Amended adopted, bill ordered to Third
Reading.**

MOTION TO REMOVE FROM THE TABLE

**Sen. Fuller Clark moved to have SB 332-FN removed from the
table.**

Motion adopted.

SB 332-FN, relative to resomation of human remains.

The question is on the adoption of Committee Amendment 0434s.

Senate Executive Departments and Administration

February 7, 2008

2008-0434s

01/04

Amendment to SB 332-FN

**Amend the bill by replacing all after the enacting clause with the fol-
lowing:**

**1 New Chapter; Resomation of Human Remains. Amend RSA by in-
serting after chapter 325-A the following new chapter:**

CHAPTER 325-B

RESOMATION OF HUMAN REMAINS

325-B:1 Definitions. In this chapter:

**I. "Alkaline hydrolysis" means the technical process that uses a high-
temperature water-based alkali solution under a high pressure system
to reduce human remains to bone shadows.**

II. "Alternative container" means a container in which human remains are placed for transport and temporary holding prior to resomation.

III. "Authorizing agent" means a person vested with the right to control the disposition of human remains pursuant to RSA 290, including but limited to, family members or funeral directors in charge of the final disposition arrangements.

IV. "Bio-ash" means the reduction of bone shadows to small particles following powdering.

V. "Board" means state board of registration of funeral directors and embalmers, as defined in RSA 325:2.

VI. "Bone shadows" means the remaining bone fragments following the resomation process and prior to powdering.

VII. "Casket" means a rigid container made of wood, metal, or other similar material, ornamented and lined with fabric, which is designed for the encasement of human remains.

VIII. "Change of ownership" means the change in the controlling interest of an established resomation facility.

IX. "Communicable disease" means communicable disease, as defined by RSA 141-C:2, VI.

X. "Delivery receipt form" means a form provided by a funeral establishment to a resomation facility authority to document the receipt of human remains by such authority for the purpose of resomation.

XI. "Dissolvable coffin" means a re-useable coffin cover that houses the rigid stainless steel basket which encases the human remains for placement within a resomator.

XII. "Funeral director" means funeral director as defined in RSA 325:1, VIII and licensed in accordance with RSA 325:14.

XIII. "Holding facility" means an area within a resomation facility, separate from public areas, designated for the retention of human remains prior to resomation.

XIV. "Human remains" means the body of a deceased person or a human body part, in any stage of decomposition and includes limbs or other portions of human anatomy that are removed from a person or human remains for medical purposes during treatment, surgery, biopsy, autopsy, or medical research.

XV. "Leak proof pouch" means a plastic, vinyl, or similar material bag that is made specifically for the containment of human remains.

XVI. "Next-of-kin" means next-of-kin as defined in RSA 290:16, IV.

XVII. "Operator" means the individual responsible for the day-to-day operation of the resomation facility.

XVIII. "Owner" means the individual, partnership, or corporation with a controlling interest in the resomation facility.

XIX. "Permanent container" means a receptacle made of durable material for the long-term placement of resomated remains.

XX. "Powdering" means the process used to reduce bone shadows to unidentifiable particles/bio-ash.

XXI. "Resomated remains" means the residue of human remains recovered after resomation and the processing of such remains by powdering.

XXII. "Resomated remains container" means any container in which resomated remains can be placed in and sealed to avoid leakage or prevent entrance of foreign materials.

XXIII. "Resomated remains receipt form" means a form provided by a resomation facility authority to an authorizing agent or his or her representative that identifies resomated remains and the person authorized to receive such remains.

XXIV. "Resomation" means the technical process that uses high-temperature water-based alkali solution under a high pressure system to reduce human remains to bone shadows.

XXV. "Resomation facility" means a building or structure which contains a resomator and holding facility.

XXVI. "Resomation facility authority" means the legal entity subject to licensing by the board to maintain and operate a resomation facility and perform resomation.

XXVII. "Resomator" means the stainless steel pressure vessel within which a resomation takes place.

XXVIII. "Resomator operator" means a person who is responsible for the operation of the resomator and the resomation facility.

XXIX. "Stainless steel basket" means a rigid stainless steel basket lined with silk and a liquid proof starch based bio-plastic lining used to encase human remains for placement within a resomator for resomation.

XXX. "Suitable solid container" means a rigid container, which is designed for the encasement and disposition of human remains before resomation.

XXXI. "Temporary container" means a receptacle made of cardboard, plastic, or other similar material in which resomated remains are placed prior to the placement of such remains in an urn or other permanent container.

XXXII. "Urn" means a container used for placement of resomated remains.

XXXIII. "Violations against a decedent" means actions that desecrate or tamper with human remains or personal effects, lead to the misidentification of a decedent, or allow the commingling of resomated remains of more than one decedent.

325-B:2 Resomation Facility, License Required. A resomation facility shall not be established, operated, or maintained in this state except by a resomation facility authority licensed by the board under this chapter. The board shall issue a license to a resomation facility authority that satisfies the requirements for licensure under this chapter. Human remains shall not be processed via resomation in this state except at a resomation facility operated by a resomation facility authority licensed under this chapter.

325-B:3 Building and Location Requirements.

I. A resomation facility shall conform to all building codes as defined by the city or town in which the resomation facility is to be constructed in addition to all environmental regulations.

II. A resomation facility may be constructed at any location consistent with applicable zoning and environmental regulations.

325-B:4 License; Application; Requirements; Fee. An applicant for an initial or renewal license as a resomation facility authority shall file a written application with the board. The application shall be accompanied by the license fee required under RSA 325-B:7 and a certificate confirming that the resomator operator has attended, prior to issuance of the license, a training course provided by the manufacturer of the resomator maintained and operated by the resomation facility authority and shall set forth the full name and address of the applicant, the address and location of the resomation facility, the name of the resomation facility operator, the name and address of the owner of the resomation facility, and additional information as required by the board, including evidence of the applicant's ability to comply with rules adopted under this chapter.

The application shall include the applicant's social security number if the applicant is an individual. The social security number shall not be a public record and shall only be used for administrative purposes.

325-B:5 License; Expiration. Except as otherwise provided in this chapter, licenses issued pursuant to this chapter shall expire 3 years after the date of issuance. Licenses shall be issued only for the resomation facility authority named in the application and shall not be transferable or assignable.

325-B:6 Change in Location, Ownership, or Name.

I. A resomation facility authority desiring to relocate a resomator shall file a written application with the board at least 30 days prior to the designated date of such relocation. The application shall be accompanied by a fee as determined by the board in rules adopted under RSA 541-A.

II. A resomation facility authority desiring to change ownership of a resomation facility shall file a written application with the board at least 30 days prior to the designated date of such change. The application shall be accompanied by a fee as determined by the board in rules adopted under RSA 541-A.

III. A resomation facility authority desiring to change its name shall file a written application with the board at least 30 days prior to such change. The application shall be accompanied by a fee as determined in rules adopted under RSA 541-A.

325-B:7 Licensure; Fees.

I. The application for an initial or renewal license as a resomation facility authority shall include a fee determined in rules adopted under RSA 541-A.

II. If the license application is denied, the license fee shall be returned to the applicant, except that the board may retain an administrative fee and may retain the entire license fee if an inspection has been completed prior to such denial.

III. The board shall collect a fee for reinstatement of a license that has lapsed or has been suspended. The board shall collect a fee for a duplicate original license.

IV. The board shall collect a fee for a certified statement that a resomation facility authority is licensed in this state and a fee for verification that a resomation facility authority is licensed in this state.

V. All fees collected by the board under this chapter shall be remitted to the state treasurer for deposit in the general fund.

325-B:8 Inspection; Board; Duties; Authority for Appointments.

I. The board shall, at least once every 3 years, inspect or provide for the inspection of any resomation facility and operated by a resomation facility authority licensed under this chapter in such manner and at such times as provided in rules adopted by the board.

II. The board shall issue an inspection report and provide a copy of the report to the resomation authority within 10 working days after the completion of an inspection. The board shall review any findings of noncompliance contained in such report within 20 working days after such inspection.

III. If the board determines, after such review, that the evidence supports a finding of noncompliance by a resomation facility authority with any applicable provisions of this chapter or rules adopted under this chapter, the board may send a letter to the resomation facility authority requesting a statement of compliance. The letter shall include a description of each alleged violation, a request that the resomation facility authority submit a statement of compliance within 10 working days,

and a notice that the board may take further action if the statement of compliance is not submitted. The statement of compliance shall indicate any actions by the resomation facility authority which have been or will be taken and the period of time estimated to be necessary to correct each alleged violation. If the resomation facility authority fails to submit such statement of compliance or fails to make a good faith effort to correct the alleged violations, the board may take further action as provided in this chapter.

IV.(a) The board may appoint technical advisors or other investigators to assist with any investigation or adjudication, and may, with the approval of the attorney general, appoint legal counsel for such purposes.

(b) To the extent the board lacks budgeted funds to conduct a significant investigation or adjudication, it may, with the approval of the attorney general, petition governor and council to receive funds not otherwise appropriated in order to retain professional advisors in the proceeding.

(c) If the governor and council approve the use of funds not otherwise appropriated, the governor is authorized to issue a warrant for the approved amount out of any moneys in the treasury not otherwise appropriated. The board shall then promptly increase its licensing fees to the extent necessary to repay the amount advanced to the general fund during the next fiscal year by means of a fee surcharge.

325-B:9 Complaints.

I. Any person may submit a complaint to the board and request investigation of an alleged violation of this chapter or rules adopted under this chapter. The board shall review all complaints and determine whether to conduct an investigation relating to such complaints.

II. A complaint submitted to the board under this section shall be confidential. A person submitting such complaint shall be immune from criminal or civil liability of any nature, whether direct or derivative, for submitting the complaint or for disclosure of documents, records, or other information to the board relating to such complaint.

325-B:10 Imminent Danger; Board Powers.

I. If the board determines that a resomation facility authority is operating a resomation facility so as to create an imminent danger of death or serious physical harm to persons employed at or in proximity to such resomation facility, the board may order the temporary suspension or temporary limitation of the license of the resomation facility authority and may order the temporary closure of the resomation facility pending further action by the board. A hearing shall be held by the board no later than 10 days after the date of such order. The board shall also simultaneously institute proceedings for revocation, suspension, or limitation of the license of the resomation facility authority.

II. A continuance of the hearing under paragraph I shall be granted by the board upon written request from the resomation facility authority. Such continuance shall not exceed 30 days.

III. A temporary suspension or temporary limitation order by the board under this section shall take effect when served upon the resomation facility authority and shall not exceed 90 days. If further action is not taken by the board within such period, the temporary suspension or temporary limitation shall expire.

325-B:11 Deny or Refuse to Renew License; Grounds. The board may deny or refuse to renew a license under this chapter or take disciplinary action against a resomation facility authority licensed under this chapter as provided in RSA 325-B:12 on any of the following grounds:

I. Violation of this chapter or rules adopted and pursuant to this chapter;

II. Conviction of any crime involving moral turpitude;

III. Conviction of a misdemeanor or felony under state law, federal law, or the law of another jurisdiction which, if committed within this state, would have constituted a misdemeanor or felony and which has a rational connection with the fitness or capacity of the resomation facility authority to operate a resomation facility;

IV. Conviction of a violation pursuant to RSA 325-B:15;

V. Obtaining a license as a resomation facility authority by false representation or fraud;

VI. Misrepresentation or fraud in the operation of a resomation facility; or

VII. Failure to allow access by an agent or employee of the board to a resomation facility operated by the resomation facility authority for the purposes of inspection, investigation, or other information collection activities necessary to carry out the duties of the board.

325-B:12 Disciplinary Actions.

I. The board may impose any one or more of the following types of disciplinary action against a resomation facility authority licensed under this chapter:

(a) A fine not to exceed \$20,000 per violation;

(b) A limitation on the license and upon the right of the resomation facility authority to operate a resomation facility to the extent, scope, or type of operation, for such time, and under such conditions as the board finds necessary and proper;

(c) Placement of the licensee on probation for a period not to exceed 2 years during which the resomation facility may continue to operate under terms and conditions fixed by the order of probation;

(d) Suspension of the license for a period not to exceed 2 years during which the resomation facility may not operate; and

(e) Revocation and permanent termination of the license.

II. Any fine imposed and unpaid under this chapter shall constitute a debt to the state of New Hampshire which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of action in the name of the state in the superior court of the county in which the resomation facility is located. The board shall, within 30 days after receipt, remit any such fines to the state treasurer for deposit in the general fund.

325-B:13 Appeal. Any party to a decision of the board under this chapter may appeal such decision in accordance with RSA 541.

325-B:14 License Reinstatement or Relicensure.

I. If the license of a resomation facility authority has lapsed for non-payment of fees, such license shall be eligible for reinstatement at any time upon application to the board and payment of the applicable fee as provided in RSA 325-B:7.

II. If the license of a resomation facility authority has been placed on probation, such license shall be eligible for reinstatement at the end of the period of probation upon successful completion of an inspection if the board determines an inspection is warranted.

III. If the license of a resomation facility authority has been suspended, such license shall be eligible for reinstatement at the end of the period of suspension upon successful completion of an inspection and payment of the applicable fee as provided in RSA 325-B:7.

IV. If the license of a resomation facility authority has been suspended, such license may be reinstated by the board prior to the completion of the

term of suspension upon petition by the licensee. After reviewing such petition and any material submitted by the licensee with such petition, the board may order an inspection or investigation of the licensee. Based on such review and such inspection or investigation, if any, the board shall grant full reinstatement of the license, modify the suspension, or deny the petition for reinstatement. The board's decision shall become final 30 days after mailing the decision to the licensee unless the licensee requests a hearing within such period. Any requested hearing shall be held according to rules of the board.

V. If the license of a resomation facility authority has been revoked, such resomation facility authority shall not be eligible for relicensure until 5 years after the date of such revocation. A reapplication for an initial license may be made by the resomation facility authority at the end of such 5-year period.

325-B:15 Acts Prohibited; Penalty.

I. Maintaining or operating a resomation facility in violation of this chapter or any rules of the board is a public nuisance and may be abated as a nuisance as provided by law.

II. It shall be a felony to establish, operate, or maintain a resomation facility subject to this chapter without being licensed as a resomation facility authority under this chapter, to hold oneself out to the public as a resomation facility authority without being licensed, or to perform a resomation without a resomation authorization form signed by the authorizing agent and a completed burial transit permit for resomation, and a medical examiner's certificate of resomation.

III. Signing a resomation authorization form with actual knowledge that the form contains false, incorrect, or misleading information is a felony.

IV. A violation of any other provision of this chapter is a misdemeanor.

325-B:16 Injunctions. The board may maintain an action in the name of the state for an injunction against any person for establishing, operating, or maintaining a resomation facility without first obtaining a license as a resomation facility authority under this chapter. In charging any defendant in a complaint in such action, it shall be sufficient to charge that such defendant did, upon a certain day and in a certain county, establish, operate, or maintain a resomation facility without obtaining a license as a resomation facility authority under this chapter, without alleging any further or more particular facts concerning the same.

325-B:17 Right to Authorize Resomation. The right to authorize the resomation of human remains and the final disposition of the resomated remains, except in the case of a minor and unless other directions have been given by the decedent in the form of a testamentary disposition or a pre-need contract, vests pursuant to RSA 290.

325-B:18 Medical Examiner's Certificate.

I. The body of a deceased person shall not be resomated within 48 hours after his or her death unless he or she died of a contagious or infectious disease. If the death occurred within the state, the body shall not be resomated by the resomation facility authority until the resomation facility authority has received the burial transit permit for resomation required by law, and a certificate from a medical examiner or deputy medical examiner that he or she has viewed the body and made personal inquiry into the cause and manner of death, and is of the opinion that no further examination or judicial inquiry concerning the same is necessary. If the death occurred within the state but the body is being transferred out of state for resomation, the transfer shall not occur until

the medical examiner has conducted such a view and inquiry and has issued a certificate. If the death occurs outside the state, the reception and resomation of the body of a deceased person shall be governed by rules adopted by the board after consultation with the chief medical examiner.

II. The resomation facility authority shall forward a copy of the resomation certificate to the office of the chief medical examiner, accompanied by a \$60 fee. The fee shall be deposited in the medico-legal investigative fund established pursuant to RSA 611-B:28.

325-B:19 Resomation Facility Authority.

I. A resomation facility authority, upon receiving human remains, shall sign a delivery receipt form and shall hold the human remains, prior to resomation, as provided in this section. The form shall include the name of the deceased, the time and date of delivery of such remains, and the signatures of the owner of the resomation facility or his or her representative and the funeral director or his or her representative, or the next-of-kin or designated agent as provided in RSA 290.

II. If a resomation facility authority is unable to resomate the human remains immediately upon taking receipt thereof, the resomation facility authority shall place the human remains in a holding facility. A holding facility shall be designed and constructed to comply with all applicable public health laws, provide for the health and safety of persons employed at such facility, and prevent any unauthorized access to such facility.

III. A resomation facility authority may refuse to accept for holding an alternative container or casket from which there is any evidence of leakage of the body fluids from the human remains in the container.

IV. If human remains received by the resomation facility authority are not embalmed, such remains shall be held no longer than 24 hours from the time of death at the resomation facility unless the human remains are placed within a refrigerated facility in accordance with the laws of this state.

325-B:20 Resomation Facility Operation; Limitations.

I. No person shall be permitted in a resomation facility, unless authorized by the resomation facility authority, while any human remains are in the resomation facility awaiting resomation, being resomated, or being removed from the resomator.

II. The human remains of more than one person shall not be simultaneously resomated within the same resomator unless the resomation facility authority has received specific written authorization from the authorizing agent for the human remains to be so resomated.

325-B:21 Resomation Facility Authority; Requirements.

I. A resomation facility authority shall not accept human remains for resomation without a proper label placed on the exterior of the alternative container or casket indicating the name of the deceased and the name and location of the funeral establishment, or the name of the next-of-kin or designated agent as provided in RSA 290.

II. No resomation facility authority shall make or enforce any rules requiring that human remains be placed in a casket before resomation. No resomation facility authority shall refuse to accept human remains for resomation if the human remains are received in a casket.

III. No resomation facility authority shall accept human remains for resomation unless the human remains are delivered to the resomation facility authority in an alternative container or casket or delivered to the resomation facility authority's holding facility to be placed in an

alternative container or casket. Human remains delivered to a resomation facility in an alternative container or casket, shall not be removed from the temporary container or casket while being held awaiting resomation. Human remains shall not be removed from the alternative container or casket for resomation without the expressed written consent of the authorizing agent as stipulated on the authorization for resomation form required. A resomation facility authority may refuse an alternative container or a casket or container that is not labeled as required under paragraph I.

IV. An alternative container shall:

- (a) Be able to be closed to provide for complete encasement of the human remains;
- (b) Be resistant to leakage or spillage;
- (c) Be rigid enough for easy handling; and
- (d) Provide protection for the health and safety of persons handling such container.

V. No resomation facility authority shall accept unembalmed human remains for resomation unless the human remains are delivered to the resomation facility authority in a leak proof pouch. If the unembalmed human remains are noted to have died from an infectious, contagious, or communicable disease, the human remains must be received by the resomation facility authority within 2 leak proof pouches.

325-B:22 Resomation Authorization Form.

I. A resomation facility authority shall not resomate human remains until it has received a resomation authorization form as provided in paragraph II, a completed and executed burial transit permit for resomation as required by law or the appropriate resomation permit from the state from which the human remains were delivered, indicating that the human remains are to be resomated, and a delivery receipt form.

II. A resomation authorization form shall be signed by the authorizing agent and shall include, but not be limited to, the following information:

- (a) The name of the deceased;
- (b) Date and place of death;
- (c) The identity of the funeral home, funeral director, next of kin or agent responsible for the delivery of the human remains to the resomation facility for resomation;
- (d) Notification that the death did or did not occur from a disease declared by the board to be infectious, contagious, communicable, or dangerous to the public health;
- (e) The name of the authorizing agent and the relationship between the authorizing agent and the deceased;
- (f) Authorization by the authorizing agent for the resomation facility authority to resomate the human remains;
- (g) A representation that the authorizing agent is aware of no objection to the human remains being resomated by any person who has a right to control the disposition of the human remains;
- (h) A representation that the human remains do not contain any material, implants, or conditions that may be potentially hazardous to equipment or persons performing the resomation;
- (i) Acknowledgement by way of initials of the authorizing agent to the resomation facility authority beside the specific statements outlining the requirements and authorization to remove the human remains from the temporary container, casket or same, in addition to the leak-proof pouch, prior to placement of human remains within the dissolvable casket for resomation.

(j) Acknowledgement by way of initials of the authorizing agent to the resomation facility authority beside the specific statement acknowledging the fact, as a requirement of the resomation process, all personal effects including all clothing must be removed from the human remains, unless clothed in acceptable clothing for resomation, prior to placing the human remains within the stainless steel basket for the completion of the resomation process.

(k) Acknowledgement from the authorizing agent to resomation facility authority of the disposition of the temporary container, casket or same, from which the human remains were removed from prior to resomation.

(l) The name of the person authorized to claim the resomated remains from the resomation facility authority; and

(m) The intended disposition of the resomated remains.

III. A resomation facility authority shall retain, for at least 7 years after the resomation, in printed or electronic format with suitable backup, copies of the resomation authorization form, the burial transit permit for resomation, the resomated remains receipt form, delivery receipt form, and any other records required under this chapter.

325-B:23 Signature.

I. Any person signing a resomation authorization form shall be deemed to warrant the truthfulness of any facts set forth on such form, including the identity of the deceased whose remains are sought to be resomated and the authority of the person to authorize such resomation. Any person signing a resomation authorization form is personally liable for all damages resulting from false, incorrect, or misleading information contained on such form.

II. A resomation facility authority may resomate human remains upon the receipt of a resomation authorization form signed by an authorizing agent, a completed and executed burial transit permit for resomation as required by law and the required medical examiner certificate of resomation.

325-B:24 Potentially Hazardous Conditions.

I. No human remains shall be resomated with the knowledge that the human remains contain a pacemaker or defibrillator or other potentially hazardous implant or condition. The authorizing agent shall take all necessary steps to ensure that any such hazardous implant or condition is removed or corrected prior to resomation. If an authorizing agent informs the funeral director and the resomation facility authority on the resomation authorization form of the presence of such potentially hazardous implant or condition in the human remains, the funeral director shall ensure that all necessary steps have been taken to remove or correct the implant or condition before delivering the human remains to the resomation facility. A funeral director who knowingly fails to ensure the removal or correction of the hazardous implant or condition prior to delivery and who knowingly delivers such human remains shall be liable for any damages resulting from such failure. If human remains with hazardous implants or conditions are in the custody of a resomation facility authority, such authority shall have the hazardous implants or conditions removed or corrected by a licensed funeral director and embalmer or a licensed embalmer at a funeral establishment within an embalming preparation room, or at a medical facility by appropriate medical personnel, or at the resomation facility by an assistant deputy medical examiner of the department of justice.

II. No human remains shall be resomated with the knowledge that the human remains contain jewelry or other valuables unless authorized

by the authorizing agent. The authorizing agent shall take all necessary steps to ensure that any jewelry or other valuables are removed prior to resomation. If the authorizing agent informs the funeral director and the resomation facility authority on the resomation authorization form of the presence of jewelry or other valuables on the human remains, the funeral director shall ensure that all necessary steps have been taken to remove the jewelry or other valuables before delivering the human remains to the resomation facility. A funeral director who knowingly fails to ensure the removal of the jewelry or other valuables prior to delivery and who knowingly delivers such human remains shall be liable for any damages resulting from such failure. If human remains with jewelry or other valuables are in the custody of a resomation facility authority, such authority shall provide for the removal of such jewelry or other valuables by a licensed funeral director and embalmer or his or her agent.

325-B:25 Disputes.

I. If a resomation facility authority or funeral establishment is aware of any dispute concerning the resomation of human remains, or has a reasonable basis to believe that such a dispute exists or to question any of the representations made by the authorizing agent with respect to such remains, until the resomation facility authority receives a court order that a dispute with respect to such remains has been settled, the resomation facility authority or funeral establishment may refuse to accept such human remains for resomation or to perform a resomation of such remains.

II. If a resomation facility authority or funeral establishment is aware of any dispute concerning the release or disposition of resomated remains, the resomation facility authority or funeral establishment may refuse to release resomated remains until the dispute has been resolved or the resomation facility authority or funeral establishment has been provided with a court order authorizing the release or disposition of the resomated remains.

325-B:26 Resomated Remains; How Treated.

I. To the extent possible, upon completion of the resomation, all of the recoverable residue of the resomation shall be removed from the resomator and any foreign matter or anything other than bone shadow shall be removed from such residue and shall be disposed of by the resomation facility authority. The remaining bone shadow shall be powdered to reduce the shadows to unidentifiable particles/bio-ash. This paragraph shall not apply when the commingling of human remains during resomation is otherwise authorized by law.

II. The resomated remains with proper identification shall be placed in a temporary container or permanent container selected or provided by the authorizing agent. The resomated remains shall not be contaminated with any other object unless specific written authorization to the contrary has been received from the authorizing agent.

III. If the entirety of the resomated remains will not fit within a temporary container or permanent container, the remainder of such remains shall be returned to the authorizing agent or his or her representative in a separate container with proper identification.

IV. If the resomated remains are to be shipped, the temporary container or permanent container shall be packed securely in a suitable shipping container that complies with the requirements of the shipper. Unless otherwise directed in writing by the authorizing agent, resomated remains shall be shipped only by a method which includes an internal tracking system and which provides a receipt signed by the person accepting delivery of such remains.

325-B:27 Resomated Remains; Final Disposition.

I. The delivery of the resomated remains to the authorizing agent or his or her representative shall constitute final disposition. If, after a period of 60 days after the date of resomation, the authorizing agent or his or her representative has not directed or otherwise arranged for the final disposition of the resomated remains or claimed the resomated remains for final disposition as provided in this section, the resomation facility authority or the funeral establishment in possession of the resomated remains may dispose of the resomated remains after making a reasonable attempt to contact the authorizing agent or his or her representative. This method of disposition may be used by any resomation facility authority or funeral establishment to dispose of all resomated remains in the possession of a resomation facility authority or funeral establishment on or after the effective date of this chapter.

II. Resomated remains shall be delivered or released by the resomation facility authority to the representative specified by the authorizing agent on the resomation authorization form. The owner of the resomation facility authority or his or her representative and the party receiving the resomated remains shall sign a resomated remains receipt form. The form shall include the name of the deceased, the date, time, and place of receipt of the resomated remains, and the signatures of the owner of the resomation facility or his or her representative and the authorizing agent or his or her representative. If the resomated remains are shipped, a form used by the shipper may be used in lieu of a completed resomated remains receipt form if the shipper's form contains the information required for a resomated remains receipt form. Both the party delivering such remains and the party receiving such remains shall retain a copy of the resomated remains receipt form or shipper's form. Upon delivery, the resomated remains may be further transported within this state in any manner without a permit.

325-B:28 Rulemaking. The board shall adopt rules, pursuant to RSA 541-A relative to:

I. Procedures for licensure of resomation facility authorities.

II. Establishing all required fees.

III. The content of all forms.

IV. Conditions under which human remains of persons whose death was caused by a disease declared by the board to be infectious, contagious, communicable, or dangerous to the public health may be transported in this state to a resomation facility for the purpose of resomation. The board shall consult with the chief medical examiner on rules adopted under this paragraph.

V. Minimum sanitation standards for all resomation facilities.

VI. Inspection procedures for resomation facilities as required under RSA 325-B:8.

325-B:29 Resomation Facility Authority; Bylaws. A resomation facility authority may enact reasonable bylaws not inconsistent with this chapter for the management and operation of a resomation facility operated by such authority. Nothing in this section shall prevent a resomation facility authority from enacting bylaws which contain more stringent requirements than those provided in this chapter.

2 Assistant Deputy Medical Examiner Accounts. Amend RSA 611-B:27, I to read as follows:

I. Assistant deputy medical examiners shall be paid at the following rates: telephone consultations—\$25; death investigations involving an external examination of the body—~~[\$125]~~ **\$140**, plus mileage at the

state rate; pre-cremation examinations conducted pursuant to RSA 325-A:18-\$50; ***pre-resomation examinations conducted pursuant to RSA 325-B:18-\$50.***

3 Repeal. RSA 325-A:30, II, relative to disposal of human remains through a reductive process utilizing alkaline hydrolysis.

4 Effective Date. This act shall take effect January 1, 2009.

SENATOR FULLER CLARK: Thank you very much, Madam President. I move Senate Bill 332-FN ought to pass with amendment. Senate Bill 32-FN [sic] was introduced at the request of the Board of Funeral Home Directors so that they can regulate a process known as “alkaline hydrolysis” or “resomation.” The Board is not interested in proposing that this be an accepted process but must now act on a pending application for operation that is currently before them. When the Legislature completely rewrote the cremation statutes back in 2006, a Senate amendment introduced one simple sentence into RSA 325-A:30, II: “Nothing in this chapter shall be construed to prohibit the disposal of human remains through a reductive process utilizing alkaline hydrolysis.” But because of the debacle surrounding the Bayview Crematorium, no one wants to allow another funerary process to go forward without regulation. The committee amendment deals with the initial negative fiscal note and provides that the process, regulation and fees are parallel to what happens when someone requests cremation. The Senate ED&A Committee asks that you support Senate Bill 332-FN as amended. Thank you very much, Madam President.

(The Chair recognized Sen. Barnes for a question of Sen. Fuller Clark.)

SENATOR BARNES: Thank you, Madam President. Senator, is this going on in the state right now?

SENATOR FULLER CLARK: What we heard in committee was that there was one business that was ... is allowed under the current statute and is providing this process. That is what is necessitating this legislation.

SENATOR BARNES: Follow-up. Did you hear that this is wide-spread throughout the country, this type of –

SENATOR FULLER CLARK: Sen. Barnes, I’ve not heard that it’s wide-spread throughout the country. But I do know that Sen. DeVries is also going to be speaking to this bill and she might be able to provide you with more information.

SENATOR BARNES: Senator, I appreciate that. And if Tom Brady could have handed off in the fourth quarter like that, we would have won that game. (Laughter)

SENATOR FULLER CLARK: Well, thank you.

(The Chair recognized Sen. DeVries for response to pending question.)

SENATOR DEVRIES: Thank you. To speak to the committee amendment that is before you. This is legislation that has passed two years ago, the process of resomation is already in statute in our state. It was brought to my attention by the Board of Funeral Directors and Embalmers that they did not have the authority to put the guidelines in place to support the statute. So what you see before you is merely mirroring the crematory language that is in place and puts the procedures in place to assure that our loved ones and our residents are treated appropriately.

(The Chair recognized Sen. Barnes for a question of Sen. DeVries.)

SENATOR BARNES: The question for the Senator is, is it widespread?

SENATOR DEVRIES: I think ... and I apologize, Senator.

SENATOR BARNES: It sounds like a weird situation.

SENATOR DEVRIES: I forgot the second half. In New Hampshire there – we are not yet utilizing the process. There is one facility, actually here in Concord, which does plan to open up. This is a process that is utilized in Europe. There is no place in the United States that is doing this today. This will be the first facility opening in the United States, with or without this piece of legislation passing. They have already received their building permits and were unable to do that based on the legislation. The words that were placed in the legislation two years ago, they were able to go forward with the process. So this is not something that I am creating today.

SENATOR BARNES: So once again, New Hampshire is first-in-the-nation.

SENATOR DEVRIES: It would appear that way.

SENATOR BARNES: Thank you.

SENATOR DEVRIES: In the “Live Free or Die” state.

The question is on the adoption of Committee Amendment 0434s.

Committee Amendment 0434s adopted.

Sen. DeVries offered a floor amendment.

Sen. DeVries, Dist. 18

February 20, 2008

2008-0750s

01/10

Floor Amendment to SB 332-FN

Amend RSA 325-B:3 as inserted by section 1 of the bill by replacing it with the following:

325-B:3 Environmental, Building and Location Requirements.

I. A resomation facility shall comply with all applicable environmental statutes and regulations.

II. A resomation facility may be constructed at any location in accordance with all applicable zoning and building codes.

Amend RSA 325-B:11 as inserted by section 1 of the bill by inserting after paragraph VII the following new paragraph:

VIII. Violation of any applicable environmental statute or regulation.

Amend the bill by replacing section 4 with the following:

4 Effective Date. This act shall take effect upon its passage.

SENATOR DEVRIES: Thank you, Madam President. And I do have further amendment that will be passed out. I'd like to speak to that amendment, which would be 0750s.

PRESIDENT LARSEN: Floor Amendment 0750s has been proposed. You may speak to that as it's being distributed.

SENATOR DEVRIES: Thank you very much, Madam President. In response to some questions that came forward at the ED&A Committee meeting, I did reach out to the Department of Environmental Services to ... and I'm wording this very carefully, knowing that we

are just headed to lunch after we finish, but addressing those concerns that committee members had. You will see before you that the Department of Environmental Services has weighed in and asks for certain authority to further oversee and regulate this process. The second half of the floor amendment that is being passed out to you is dealing with the effective date. And because we do have that one facility which is opening up in Concord, has already received their permission from the City of Concord, we need to have the effective date immediately upon passage for this regulatory piece of legislation that is before you today. Thank you.

The question is on the adoption of Floor Amendment 0750s.

Floor Amendment 0750s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 332-FN.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

Luncheon Recess/Out of Recess.

AFTERNOON SESSION

COMMITTEE REPORTS, RESUMED

CACR 31, relating to the funding of public education. Providing that the legislature shall make a reasonable determination of the content, extent, funding, which shall include targeting, and delivery of public education. Judiciary Committee. Inexpedient to Legislate, Vote 5-0. Senator Foster for the committee.

MOTION TO TABLE

Sen. Foster moved to have CACR 31 laid on the table.

Motion adopted.

LAID ON THE TABLE

CACR 31, relating to the funding of public education. Providing that the legislature shall make a reasonable determination of the content, extent, funding, which shall include targeting, and delivery of public education.

CACR 32, relating to local public education. Providing that the local political subdivision responsible for public education shall have the power to determine curriculum, set standards, and determine funding, and that the legislature may provide supplemental funding. Judiciary Committee. Inexpedient to Legislate, Vote 4-1. Senator Foster for the committee.

MOTION TO TABLE

Sen. Foster moved to have CACR 32 laid on the table.

Motion adopted.

LAID ON THE TABLE

CACR 32, relating to local public education. Providing that the local political subdivision responsible for public education shall have the power to determine curriculum, set standards, and determine funding, and that the legislature may provide supplemental funding.

CACR 33, relating to funding a public education. Providing that the legislature shall define standards for education, determine the level of state funding thereof, establish standards of accountability, and allocate state

funds in a manner that mitigates disparities in educational opportunity and fiscal capacity, provided that every school district receives a reasonable share of the state funds on a per pupil basis. Judiciary Committee. Inexpedient to Legislate, Vote 5-0. Senator Foster for the committee.

MOTION TO TABLE

Sen. Foster moved to have CACR 33 laid on the table.

Motion adopted.

LAIID ON THE TABLE

CACR 33, relating to funding a public education. Providing that the legislature shall define standards for education, determine the level of state funding thereof, establish standards of accountability, and allocate state funds in a manner that mitigates disparities in educational opportunity and fiscal capacity, provided that every school district receives a reasonable share of the state funds on a per pupil basis.

CACR 34, relating to funding of public education. Providing that the general court shall define an adequate education and distribute state funds for public education in a manner that alleviates local disparities. Judiciary Committee. Ought to Pass, Vote 3-2. Senator Foster for the committee.

SENATOR FOSTER: Thank you, Madam President. I move CACR 34 ought to pass. I'm one of the sponsors of this bipartisan amendment. I sponsored an amendment last year and this fall I served on the Costing Commission and wondered if my service would make me change my mind about the need for an amendment. It did not. I was humbled to have served with the members on the committee, many of whom have forgotten more about education policy than I've ever known. The commission did great work. It defined costs and decided more would go to schools with high concentration of at-risk students to meet adequacy. This and other findings of the commission are critically important, and they'll be used whether or not we have a constitutional amendment. They will make their way to a funding plan and that plan will need to pass. It is our duty to do so, and I intend to fight to make that happen, whatever the outcome of this or any other constitutional amendment may be. Will our funding plan be constitutional? Yes, it will. But when it's released, unless we expend millions more than we are spending today, I predict none of us in this body will like the results. The plan we will put forward will not be as good a plan as we could do. Why? Because it can't be. In fact, the best plan we could do is prohibited by the Court's *Londonderry* decision. That case prohibits the Legislature from considering the relative wealth or need of the community. It says, and I quote, "Whatever the State identifies as comprising constitutional adequacy, it *must* pay for. None of that financial obligation can be shifted to local school districts regardless of their relative wealth or need." We are thus required to send an adequacy grant to every student in every community, even if that community has few, if any, at-risk students and has great property wealth and relatively high income. That is simply bad education policy. No other state has been ordered to do that that I'm aware of. Not one. I've written that investing in our children's education is the best investment we can make, and I completely believe that. But that investment must be done wisely. With the *Londonderry* decision at our backs, the investment we make cannot be wise. The *Claremont* decisions were brought to equalize educational opportunity in our state, not make it less so. The *Londonderry* requirement that we expend a universal grant per student

for every student, regardless of their relative wealth or need of the community in which they live, will only mean the wealthiest communities in our state will expend even more while we struggle to get the dollars to those that need it the most. Just because the plan we passed in this body is constitutional per *Londonderry* does not mean that the plan is best for our children's education for our state. I do not believe that *any* of us, *any* of us, would write an education funding law that *Londonderry* requires us to write if we were doing so on a blank slate. This bipartisan amendment allows us to target the aid within adequacy so it goes to the communities that need it the most. It's a compromise. Sen. Gatsas and I worked on it together, and many of you have sponsored it.

There has been criticism in the media of CACR 34 since we brought it forward. One newspaper editorialized that the amendment would allow the State "to do essentially nothing beyond defining the content of an adequate education and distributing whatever money a given Legislature feels like spending." Another wrote that "There is no magical constitutional amendment to cure all ills" and that CACR 34 would return the state to pre-*Claremont* days. These judgments are, in my review, respectfully, dead wrong. CACR is a straight – 34 is a straightforward and limited change to our constitution to fulfill our commitment to education. It does not dilute or diminish our obligation to better the educational opportunity of public school children. It allows us to effectively target educational aid where it's needed the most, in the communities with the greatest concentration of at-risk students, but with comparatively fewer resources to help these students.

My own commitment to public education is personal. My daughters, all three, attend Nashua's public schools. As a member of this body and its Education Committee, I am here to help ensure the success of public education for all New Hampshire families. I could not, and would not, support any amendment that jeopardizes the quality of public education. Let me take a minute to describe what CACR 34 does and what it doesn't do. First, the amendment does not alter the existing constitutional duties to define an education, cost it, fund it, and provide accountability to ensure the delivery of an adequate education to public school students. The first 12 words of the amendment state, "In fulfillment of the State's duties set forth in the preceding article." The amendment does not state "notwithstanding those duties." Those duties do not disappear under CACR 34. The *Londonderry* decision, in all but one very important way, remains the law of the state. Where CACR 34 departs from the *Londonderry* decision is in its effect on our ability to target money where it's needed the most, to schools with enhanced needs but which lack the resources to place students in those schools on an equal footing with other public school students across the state. As I noted before, the *Londonderry* decision created a requirement in New Hampshire that, to the best of my knowledge, exists nowhere else in the country; that is that the State must pay for the first and last dollar of an adequate education. As a matter of policy, I think that is wrong and I believe that the Court was wrong in establishing that requirement. CACR 34 will correct that inequity and allow the State to direct money to the schools with the greatest needs.

Critics of the amendment question what the disparities are that the Legislature will attempt to alleviate. The amendment doesn't name the disparities, they argue. There are a variety of local disparities that the Legislature could focus on in targeting aid, all beyond the relative wealth of the communities. For example, a community's ability of tax is one factor, its personal income, test score results, transportation needs, tech-

nology needs, and concentration of at-risk students, among others. Over the years Democrats and Republicans have tried to target aid to limit local disparities based on different factors. These factors should not be set in stone. The Legislature should be free to consider all appropriate factors and change them over time, when and if needed. The amendment, importantly, does not remove the Court from its constitutional role of judicial review. The amendment does not say that the Legislature has the *exclusive* authority in defining an adequate education or distributing funds. It says that the Legislature must reasonably define an adequate education and when it distributes the money to alleviate local disparities, it must do so in a reasonable manner.

If this Legislature wanted to remove the Court from review of what constitutes an adequate education or to cost it or to provide for its funding and accountability, it would have to include language that is nowhere found in CACR 34. It would have to say that it has the *exclusive* authority or *exclusive* responsibility, or the amendment would have to state that it is being adopted notwithstanding the State's duties in Part II, Article 83. This amendment does not do that. It is simply not true that the amendment gives the license to this Legislature to do essentially nothing, as some have written. For example, as some suggest, the Legislature on this amendment can't simply dumb-down the definition of an adequate education in order to reduce costs. The Legislature, in HB 927 last year, articulated a comprehensive and specific definition of an adequate education that is rooted in the state board's school approval standards. That definition may evolve in the future to reflect changing educational demand of the 21st Century, but I don't see a way to chip away at any of the components we've identified. This is a good compromise. If you want to reverse all the *Claremont* decisions, this is not the amendment for you. Mr. Van Loan wrote such an amendment, I didn't, and I won't support one like it. If you want one that allows you to target aid and to move to a sensible and rational method of allocating education aid, you have it here. Please vote in favor of CACR 34. Thank you, Madam President.

(The Chair recognized Sen. Downing for a question of Sen. Foster.)

SENATOR DOWNING: Thank you, Senator. As a sponsor of this amendment, can you tell me if there's anything in this amendment that would circumvent 28-A to allow the State to pass mandates onto the local communities and school districts without funding them?

SENATOR FOSTER: I don't think the amendment affects 28-A one way or the other. I think the law remains the same on that.

SENATOR DOWNING: Thank you.

(The Chair recognized Sen. Barnes for a question of Sen. Foster.)

SENATOR BARNES: Thank you, Madam President. Sen. Foster, I have two plaintiff towns, Allentown and Pittsfield. It's your opinion that this is going to be a help for those towns to have money targeted to where it's needed?

SENATOR FOSTER: Yes. I don't know those towns nearly as well as you do, but the prohibition in *Londonderry* to consider the relative wealth or need of those communities, I think is injurious to Pittsfield or Allentown, and we could consider that in a funding plan.

SENATOR BARNES: Would you believe that's the reason I signed onto your piece of legislation?

SENATOR FOSTER: I believe it if you tell me so.

SENATOR BARNES: Thank you.

SENATOR FOSTER: Thank you.

(The Chair recognized Sen. Burling to speak.)

SENATOR BURLING: Thank you, Madam President. I rise to make three very brief points. First, I would like to have my name associated with the comments of the Majority Leader. I think I've just heard one of the most articulate and carefully worded endorsements of a CACR that's ever been my privilege to hear. Second, I would like to say throughout my participation in the school funding struggle, I have from time to time, yearned for that moment when we might actually ask the voters of the State of New Hampshire to participate, to give us their view of what they want. I think after nearly ten years, I finally see the moment when that is within our grasp. We see a superbly worked school-costing proposal that is coming forward and we see now a targeting amendment that does what many of us believe to be the best possible school funding policy. However we go forward, it's time to let the voters of New Hampshire have their say, and passage of this amendment onto the ballot will accomplish that. I hear from time to time people say to me: But, Peter – but, Peter, we're not a referendum state, we don't do that. I'd simply like to remind folks that we used to have constitutional conventions every ten years and we used to address issues like this in a fairly regular way. We haven't done that recently. We certainly haven't done it with reference to education funding. Here's a chance to really let the voters decide. Thank you, Madam President.

(The Chair recognized Sen. Gatsas to speak.)

SENATOR GATSAS: Thank you, Madam President. I applaud my colleague, Sen. Foster. He certainly spoke very eloquently. And I applaud him for at least both of us meeting at 90 percent. I don't think this constitutional amendment is a hundred percent of what I wanted, I don't think it's a hundred percent of what Sen. Foster wanted. However, when you talk about a constitutional amendment, it's truly about the education of the children in the State of New Hampshire. Everyone understands that we talked about a constitutional amendment three years ago and we couldn't get a collaborative effort. Today we have a collaborative effort. I think it's going to leave this body with a very collaborative situation. I look at my colleagues on the other side of the wall and ask them that if we start trying to tweak this amendment, it only has 50 words. It's a simple amendment that you could find for the people of New Hampshire to understand, have an opportunity to vote on. I think every one of us would like to put a different word in a different place, add one, take one out. But at some point you're going to lose people along the way. I think at times we find bills that come from the House, and the Senate recognizes 'em and doesn't change anything and allow them to pass into law. The same happens with a bill from the Senate that goes to the House. They recognize it; there may not have to be a change there, and it goes into law. I hope this is a bill that allows the people of New Hampshire an opportunity.

No matter what education funding proposal you look at, as I've said for the last eight years working on this, that to make 234 communities happy in this state, you must write 234 different education funding schemes. It's not an easy task. I think that the Adequacy Commission that sat down and worked on that, some of those people sat around in 2000 on an Adequacy Commission back then. And I remember there was

a discussion with then Senator ... Sen. Cilley's district. No, before Sen. Green. McCarley. Sen. McCarley and Rep. Kurk argued for two days about one word on how they were going to express a statement. In the end, I don't know who won. But I think it's important that we understand that we are now having an opportunity, and that opportunity doesn't come along very often. People can sit here and say, "You're using the word 'reasonable' twice in a constitutional amendment." That takes the court out. I think we can all agree that no matter what you do, how you attempt, if somebody wants to go to court, they're gonna go. If the court wants to hear it, they're going to hear it. So nothing that I have proposed, or Sen. Foster's proposed, takes the courts out.

28-A issues is a large issue for a lot of Senators in this room. I believe that this bill, or this constitutional amendment, when you talk about alleviating local disparity, it does not remove 28-A. If we're talking about the State saying, "You 11 communities must have kindergarten," then the State must pay for kindergarten 'cause that's a local disparity. And if we're looking to alleviate that local disparity, then we should pay for it. That's like any other disparity that we see. What is the disparity that we can possibly talk about 20 years from now? I don't know. But I don't think 20 years ago that anybody could have conceived that there would be 72 different dialects being spoken at Central High School. That's a disparity. It's a disparity that the State should take care of. So I think it's important that we all look at this and go out in a very collaborative effort, talk to our colleagues on the other side of this wall and ask 'em for their help to get this to the people of New Hampshire. It's important. It's vital. Because Sen. Foster is right. No community that has \$2 million in value per child should be getting money from the State of New Hampshire. That makes no sense. So I ask you to let's move this along and work in a collaborative effort with the people in the House to make this a reality so that the people in New Hampshire have an opportunity to vote. Thank you, Madam President.

(The Chair recognized Sen. Janeway to speak.)

SENATOR JANEWAY: Thank you, Madam President. I, too, commend Sen. Foster and the others for their statements. I couldn't possibly improve on them. But I want to address one aspect of this amendment that has not, I don't think, received the attention it deserves. I want to look at what the amendment – I want to look not at what the amendment is intended to do, who's not to favor targeting, but how it does it. Constitutional scholars, and that's not me, no doubt would describe this all more elegantly, but in terms that I can understand, there is a range of review the courts can apply and it's not a choice that they can make, it's dictated by the circumstances and the law. And if you think of this as a "toughness" scale, at the top of the scale is "strict scrutiny." And that's the term that's familiar to many because it has applied throughout this whole, many, many-year struggle. At the bottom of the "toughness" scale is "rational basis." And what essentially that means is that if the – as I understand it, if the Legislature has a reason, a "rational basis," and some would argue it need not even be a good reason, but a reason that that may be enough to meet the rational basis standard. And of course there are gradients between those two, and lord knows what they call them. With that, though, let me turn to the amendment. From what I've just outlined, it should be clear why, as Sen. Gatsas indicated, "reasonably" appears twice in the relatively brief, very brief amendment we have. The Court shall "reasonably" define and "reasonably" determine.

So, in short, what this amendment does is move from “strict” to “easy.” And I think that needs to be fully understood. And this is no small matter. Yet there has been little focus or discussion about that part of this, and I find that somewhat troubling. It may be that those who want the Court out, and there certainly have been those who do, would rather not call attention to this, and it may be that those who want this amendment would like to keep this whole thing as simple as they can, in hopes that it will pass, and see no advantage to going there in the discussion. My thought is, given the Legislature’s lengthy history of failing to fund over the years, who in the future is going to hold the Legislature to account, given this change in the level of scrutiny. I have taken that question to the sponsors and to the principal supporters of this amendment and I’ve been assured that the Court would continue to act under the rational basis and have the right and opportunity to do so. And I have taken them at their word, and I thank Sen. Gatsas for making that point clear in his remarks. With that, I will vote in favor and encourage as full and fair discussion of this issue as we can have. Thank you, Madam President.

(The Chair recognized Sen. Bragdon for a question of Sen. Gatsas.)

SENATOR BRAGDON: Thank you, Senator. As you know, I represent three towns currently embroiled in the whole discussion of public kindergarten and a little sensitive to the issue of mandates. And I know you’ve said that it’s your opinion that this isn’t going to be a way to circumvent 28-A. But as one of the sponsors of this bill, I’d like to ask, for the record, is it your intent, or do I understand your intent correctly, that what’s put here in this proposed amendment should not be viewed in any way as a way to get around 28-A issues and a way for the State to mandate programs without paying for them?

SENATOR GATSAS: Absolutely. I don’t think any constitutional amendment that I’ve ever brought forward would try and circumvent 28-A. It’s my belief that if the State mandates it, we should pay for it. It’s a little different than the federal government. They mandate it, but they don’t pay for it.

SENATOR BRAGDON: Thank you, Senator.

Sen. Clegg offered a floor amendment.

Sen. Clegg, Dist. 14

Sen. Gallus, Dist. 1

Sen. Kenney, Dist. 3

Sen. Odell, Dist. 8

Sen. Roberge, Dist. 9

Sen. Bragdon, Dist. 11

Sen. Gatsas, Dist. 16

Sen. Barnes, Dist. 17

Sen. Letourneau, Dist. 19

Sen. Downing, Dist. 22

February 21, 2008

2008-0758s

06/09

Floor Amendment to CACR 34

Amend the resolution by replacing all after the enacting clause with the following:

I. That the second part of the constitution be amended by inserting after article 83 the following new article:

[Art.] 83-a [Funding Public Education.] In fulfillment of the state's duties set forth in the preceding article, the general court shall have the authority and responsibility to reasonably define the content of an adequate public education and distribute state funds for public education in the manner that it reasonably determines to alleviate local disparities. The state shall not mandate, expand, or modify programs or responsibilities that would require additional expenditures without providing full funding.

II. That the above amendment proposed to the constitution be submitted to the qualified voters of the state at the state general election to be held in November, 2008.

III. That the selectmen of all towns, cities, wards and places in the state are directed to insert in their warrants for the said 2008 election an article to the following effect: To decide whether the amendments of the constitution proposed by the 2007 session of the general court shall be approved.

IV. That the wording of the question put to the qualified voters shall be:

"Are you in favor of amending the second part of the constitution by inserting after article 83 a new article to read as follows:

[Art.] 83-a [Funding Public Education.] In fulfillment of the state's duties set forth in the preceding article, the general court shall have the authority and responsibility to reasonably define the content of an adequate public education and distribute state funds for public education in the manner that it reasonably determines to alleviate local disparities. The state shall not mandate, expand, or modify programs or responsibilities that would require additional expenditures without providing full funding."

V. That the secretary of state shall print the question to be submitted on a separate ballot or on the same ballot with other constitutional questions. The ballot containing the question shall include 2 squares next to the question allowing the voter to vote "Yes" or "No." If no cross is made in either of the squares, the ballot shall not be counted on the question. The outside of the ballot shall be the same as the regular official ballot except that the words "Questions Relating to Constitutional Amendments proposed by the 2007 General Court" shall be printed in bold type at the top of the ballot.

VI. That if the proposed amendment is approved by 2/3 of those voting on the amendment, it becomes effective when the governor proclaims its adoption.

SENATOR CLEGG: Thank you, Madam President. I would like to offer a floor amendment, and I'd like to speak to that amendment.

PRESIDENT LARSEN: The floor amendment is 758.

SENATOR CLEGG: Yes.

PRESIDENT LARSEN: And you may speak to that as it's being distributed.

SENATOR CLEGG: Thank you. With all due respect to my colleagues, I don't read this constitutional amendment the way they do. And I'd have no doubt that their intent was to never circumvent 28-A. But here's what we're doing when we pass this out: It says "In fulfillment of the State's duties, the General Court will have the authority and the responsibility to define the content of an adequate education." So that means if they decide an adequate education includes preschool, kindergarten, anything they want, we're saying, you have the right. And then it says nothing about Article 28-A. It says that they'll also have the right to "distribute

state funds in a manner that it reasonably determines to alleviate local disparities." Now, I don't have a law degree, but I have looked in *Black's Law* and I've looked in all the other books I can find, and nowhere do I find any definition that says local disparities equals mandates. All my amendment does is add the words "The State shall not mandate, expand or modify programs or responsibilities that will require additional expenditure without providing full funding." I can't honestly send on to my people something that I firmly believe removes from the Article 28-A protection all of education, and that's what this does. So if the intent is not to remove it, then let's make sure it's in there. Because then, and only then, can I pass something or vote for something. And then, and only then, can I tell my constituents that they have a good thing that they can vote for. If this passes out of here like the way it is and goes through the House that way, I'm going to have to be one of the people that say, when the State decides you need preschool, you ready to pay for it? Because if they define it as part of an adequate education and you pass this amendment, this amendment states that the General Court will decide how much money to give you. It takes education out of the protections of 28-A, and suddenly says on education funding, whatever we decide you need, you're going to do. And what's a local disparity? A local disparity is, I can't raise enough money in my local community to do what you want, so you're going to send me some? But then you decide whether or not I can raise enough money in my community, if I don't buy that new fire truck, I don't hire two more cops; you get to decide all of the expenditures I do, if I don't have a 28-A protection. So I'm asking you if your real intent is to pass something that allows us to target aid, then that sentence that protects us again, with the same protections of 28-A, shouldn't bother any of you, and then I, too, will vote for this amendment, because then I know that I'm not saying to the General Court: Go ahead, you decide how I spend my money every time you meet. Thank you, Madam President.

(The Chair recognized Sen. Foster to speak.)

SENATOR FOSTER: Prior to this amendment being brought forward, I was asked whether I think the current amendment does anything to 28-A. I said that I don't think it does, I don't think it changes what the law is today on that point. So I just don't think we need this amendment. I'm not going to support it. I'm also a little concerned that it didn't have a full hearing. I understand the sponsor's intent, but I think the intent of this group has been clear on the issue of 28-A. Thank you.

(The Chair recognized Sen. Clegg for a question of Sen. Foster.)

SENATOR CLEGG: Sen. Foster, is it your opinion, then, that anything that doesn't have a full hearing shouldn't be passed here today? Because I think we already did that on a couple of issues.

SENATOR FOSTER: No, I think that from time to time we bring amendments forward, but I think I've given two reasons why I don't support the amendment today. One is I'm concerned that it hasn't been fully vetted, but beyond that, I don't think the issue is necessary, as I said before.

SENATOR CLEGG: Thank you, Senator.

SENATOR FOSTER: Thank you.

The question is on the adoption of Floor Amendment 0758s.

A roll call was requested by Sen. Kenney, seconded by Sen. Barnes.

The following Senators voted Yes: Gallus, Kenney, Odell, Roberge, Bragdon, Clegg, Gatsas, Barnes, Letourneau, Downing.

The following Senators voted No: Reynolds, Sgambati, Burling, Cilley, Janeway, Kelly, Gottesman, Foster, Larsen, DeVries, D'Allesandro, Estabrook, Hassan, Fuller Clark.

Yeas: 10 - Nays: 14

Floor Amendment 0758s failed.

(The Chair recognized Sen. D'Allesandro to speak.)

SENATOR D'ALLESANDRO: Thank you, Madam President. Madam President, I rise in support of CACR 34, and recognize the fact that in talking about amending the constitution, you're doing something of enormous importance. We are not a referendum state. The only way we change our constitution is via an amendment process. That amendment process calls for two-thirds of the state to vote in the affirmative. First, I'd like to thank Sen. Gatsas and Sen. Foster for bringing forth something that's been done in a very collegial manner. And in an effort like this you need a collegial manner in order to get something going forward. It takes all of us working together, bringing the best that we have forward, the best ideas forward. But I'd be very, very remiss if I didn't mention my colleague who sits to my immediate left. There is no one in this Senate who's done more to work on the education problems than Sen. Iris Estabrook. Now, we don't always agree on everything, but I'll tell you one thing that I agree on: the quality of her work, the collaborative nature in which her work progresses and have the fondness for her ideas. Because ideas are what this body should be all about: positive, good ideas. And the discussion and the debate that takes place when an idea is brought forward is very meaningful to all of us, because we all benefit from an idea. We benefit from that good discussion and debate that takes place when an idea is brought forward.

Letting the people decide. I teach state and local government. I've been a teacher all of my life. One of the things that I bring to my class is when an issue of monumental importance comes forward, letting the people decide is a very important part of that issue. Let me articulate an issue that involved the Constitution of the State of New Hampshire. When the initial Constitution of the State of New Hampshire was drafted, Roman Catholics were not allowed to hold public office. That was in our constitution. It took a constitutional amendment to change that. There are some of us who wouldn't be in this chamber if that amendment had not passed. That amendment certainly changed the lives of those who professed Roman Catholicism in this state. In our federal constitution, women were not allowed the right to vote. We think of that as an enormous tragedy; yet it took a constitutional Amendment to change that. Think of that, 52 percent of the population at one time was not allowed the right to vote. So, people, when given an opportunity, participate and make decisions. This is a fundamental decision. Educating our children. All of my children went through the public school system in the City of Manchester. All of my children, K through 12. Two of my children went through the public post-secondary education system. So I believe very strongly in education.

Giving people the right to decide on an issue that is so significant is a just situation. It's the true manifestation of justice. And we have to have confidence in the people that we present to them, something that they understand, they have the full value of the ramifications, and they're

allowed to make a decision on this important issue. That's what democracy is really all about. We are not an initiative state. We are not a referendum state. We are not a recall state. Those are progressive movements that came about in the latter part of the 19th Century. What we are is a state that allows for constitutional amendments. This is an opportunity for us to give everyone an opportunity to participate in the process. It's a very difficult decision that all of us have to make, but in the process of moving things forward, there are certain things that we have to do. In my opinion, this is one of them. And as I say, and I'll end by saying this: my respect and admiration for the people who've worked so long on education is clearly there. I sponsored my first education bill in 1973. My first education bill. It was the School Feeding and Nutrition Act. I've been around this business a long time. We've come a long way. We've come a long way. This is another step along that path. We have to make a decision. We make decisions based on what we believe are the best interest of the people we represent. All of us do that in good conscience. I, in good conscience, will vote for this amendment. Thank you, Madam President.

(The Chair recognized Sen. Barnes to speak.)

SENATOR BARNES: Thank you, Madam President. This issue has been around for at least nine years. And if you want to be honest about it, it was back in 1982 the Town of Raymond was involved with this situation, so *Claremont I* really wasn't *Claremont I*, it was *Claremont II*. In 1982 a number of towns had a problem. The last three times that I have run for office, I probably have five bullets on my brochures from the mailings that I send out. And one of those bullets has always been, the last three terms: I am going to work with my colleagues, both sides of the aisle, to get this issue out of the way. You all go to your town meetings, you all see the problems that we have trying to come up with budgets, the towns not knowing how much money they are going to be getting year by year. At the deliberative session on February 2, Sen. Barnes was called to the microphone: "Sen. Barnes, how much money are we going to get this year?" Everybody's concerned about it. It's not fair. It's not right. I think this amendment is a great way, a great move ahead.

And you know something, what's wrong with the people being able to vote? Every two years they go out and vote for us. Gee, we haven't changed that. We let the people decide who they want to run the state. So what in the world is wrong with the people of the State of New Hampshire having an opportunity to move this issue forward once and for all. And I think it was a great effort, it's a great bipartisan effort, and I'm so happy to see that, and it's long overdo. I have two towns that are plaintiff towns. If any of you have plaintiff towns – and three others of you in here do have plaintiff towns – go in there, go into their schools and listen to what the people have to say. Listen to some of the kids, some of the parents. Every time I go into Pittsfield and Allenstown, guess what? What are they asking? They're not asking me what time it is. They're asking me what am I doing about this education funding situation. That's the question that's on the minds of those people in those two towns. The people in Raymond are concerned. Raymond's a poor town. We have all sorts of problems with our school situation with the way the money flows in and what's happening. Targeting the money to the needy towns is the only sensible way to do it. And I'm so happy that it looks to me like we're going to have the 15 votes necessary to move this across the hall and let the people of this state step forward and say: Guys, this is good, and let's go on from there and take care of this stinking mess that we have

had. 'Cause I've had to get up and say – and I've said it a couple of times at a couple of different towns I've been in – that I think, me, as a state Senator, have done a lousy job, I've let the people of my towns down by not being able to get something done. There it is in my brochure. One guy flapped, said: Look at this, it says you're going to work on this. I said, "I am working, but I haven't worked hard enough." And maybe I can go to bed tonight saying: Gee whiz, Jack, finally I can show the folks this bullet that something happened, and by gosh, I was on the right side of the issue. So let's go, let's put it to bed, let's move it on and let the folks out there that we represent make a decision to help us take care of this thing. And thank you. And I hope the House over there is listening and I hope they do the same thing.

(The Chair recognized Sen. Fuller Clark to speak.)

SENATOR FULLER CLARK: Thank you very much, Madam President. I rise as a cosponsor in support of CACR 34. And I just would like to try to put this whole conversation in some context and to think back to the early 1990's when those of us who were in the Legislature at that time were first asked to try to come up with solutions to the problem of making sure that every child in this state had the opportunity to receive an adequate education. Time and time again in the past, constitutional amendments have been placed before this body or placed before the body in the House, and they have never made it out to the citizenry to vote on. But in the meantime a number of very positive steps have been taken that now make it the moment for this constitutional amendment to go forward to the people. We have met the demands of the Supreme Court to provide a definition of "adequacy" which was accepted by the Supreme Court last June. We did not have a comprehensive definition of "adequacy" that was based on well-thought-out language that encompassed – encompassed our fundamental commitment to the principles of a good education. And we have to thank the House and the Senate, and Sen. Iris Estabrook, for bringing forth the language that we could all support that defined "adequacy." We did that without tying it to any dollars. We looked at it independent of what it would mean in terms of cost. That's different than the way we have gone about looking at adequacy in the past.

Over the last eight months there have been a group of unbelievably committed individuals from the House and the Senate who have spent every Monday, and I'm sure many sleepless nights and other waking hours, working on the issue of how we approach the issue of cost. That costing report came out to us two weeks ago. It is a document that is available to the public. It is available to all of the members of the House and the Senate, and I think it gives us a fundamental roadmap as to where we need to go in terms of what the costs are for the State to do its fair share of providing for an adequate education for its students. But we have one roadblock that is left. And that is that without the constitutional amendment, this state, unlike any other state, except for Hawaii, is required to pay, as you have heard, both the first and the last dollar of education for our students. And that "one" means that we are sending money to communities that have demonstrated that they have the capacity to raise substantial dollars within their own communities for a more than adequate education. And what we're hearing is, as long as we send those State dollars to those communities, we do not have the ability or the flexibility to send those dollars to communities where it is clear they do not have the capacity and are a long way from obtaining that capacity of being able to fund a reasonable share of the cost of

education in their communities. And we come back to the problem that all of a sudden the investment in education for our children is going to be determined on a pupil-by-pupil basis within those communities on the basis of what those communities can afford.

Now, the costing committee came forward with a way to assist those communities on top of the universal grant. But if we can take that universal grant and dedicate those resources to those still needy communities, we will be able to bring all of those students that need additional investment further up on the level of what they deserve and need to have to emerge as well-educated, independent, competent, self-supporting adults. And we also need to recognize that without the constitutional amendment, we are going to be back into the situation, which no one has yet talked about, of creating donor communities. Now, those donor communities, yes, they may have very high property values. But they do not, just as many other communities, have hundred percent wealthy individuals. And as you raise the ante on those communities, it hurts many, many individuals within those donor communities. And what I have heard from those communities is, they don't expect, if they have high property values and can raise the dollars themselves, to get state aid. But they don't believe that they should be required to send state aid to communities that already are doing extremely well in funding their students and would be receiving that universal grant when they don't need it. That's why we need this constitutional amendment, so we can make sure that we have the best and most effective use of State dollars and that we don't continue to pit one community against another when we all recognize that what we need to be doing together is providing the best possible opportunity for an education for every child in the state, regardless of where they live. And without the constitutional amendment, we cannot do that. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on CACR 34.

A roll call was requested by Sen. Barnes, seconded by Sen. Burling.

The following Senators voted Yes: Gallus, Reynolds, Kenney, Burling, Janeway, Odell, Roberge, Kelly, Bragdon, Gottesman, Foster, Larsen, Gatsas, Barnes, DeVries, D'Allesandro, Downing, Hassan, Fuller Clark.

The following Senators voted No: Sgambati, Cilley, Clegg, Le-tourneau, Estabrook.

Yeas: 19 - Nays: 5

Motion of Ought to Pass adopted by necessary 3/5 vote, bill ordered to Third Reading.

SB 311-FN, extending the statute of limitations for civil actions based upon a sexual assault case. Judiciary Committee. Ought to Pass with Amendment, Vote 5-0. Senator Gottesman for the committee.

Sen. Foster, Dist. 13

February 12, 2008

2008-0520s

06/04

Amendment to SB 311-FN

Amend the bill by replacing section 1 with the following:

1 Limitations of Actions; Sexual Assault and Related Offenses. Amend RSA 508:4-g to read as follows:

508:4-g Actions Based on Sexual Assault and Related Offenses. A person, alleging to have been subjected to any offense under RSA 632-A or an offense under RSA 639:2, who was under 18 years of age when the alleged offense occurred, may commence a personal action based on the incident within the later of:

I. Twelve years of the person's eighteenth birthday; or

II. Three years of the time the plaintiff discovers, or in the exercise of reasonable diligence should have discovered, the injury and its causal relationship to the act or omission complained of.

SENATOR GOTTESMAN: Thank you, Madam President. I move Senate Bill 311-FN as ought to pass with amendment. Senate Bill 311, as introduced, would have extended the statute of limitations for victims under the age of 18 for filing a civil action based upon a sexual assault from seven years to 22 years or until that person was 40 years of age. The Judiciary Committee felt that the proposed amendment that extends the period to the later of 12 years after the victim's 18th birthday or three years after discovery was acceptable. The Committee heard compelling testimony of how extremely difficult it is to come forward, especially when the perpetrator is a close acquaintance or a family member, and wanted to allow more time to file suit. We feel that the compromised length in the amendment is an excellent step toward – step forward in providing civil remedies to more victims. Therefore, the Judiciary Committee recommends that Senate Bill 311-FN be adopted as amended and asks your support. Thank you.

(The Chair recognized Sen. D'Allesandro to speak.)

SENATOR D'ALLESANDRO: Thank you, Madam President. First, I'd like to thank the Committee for the work that they did on this piece of legislation. I think it's a very important piece of legislation. It isn't all that I had hoped for, but I think what they did is certainly an improvement of the situation. The difficulty that a victim has in coming forward is extremely problematic, because in 93 percent of the cases the predator is known to the victim. And it takes a great deal of courage on the part of the victim to come forward, and when the victim does come forward, it's a very, very difficult, difficult, situation. And that's why these – that's why these statute of limitations had to be, had to be extended. As I said, it's not all I had hoped for, but I appreciate what the Committee has done. I think it's a step forward in getting some of these situations resolved; and hopefully these kinds of things can be taken care of. But it is most – it is most important that we give victims the opportunity to come forward in an environment that's conducive to helping them, and I think this will go a long way to doing that. Thank you, Madam President.

**The question is on the adoption of Committee Amendment 0520s.
Committee Amendment 0520s adopted.**

**The question is on the adoption of Ought to Pass as Amended
on SB 311-FN.**

**A roll call was requested by Sen. Barnes, seconded by Sen.
DeVries.**

**The following Senators voted Yes: Gallus, Reynolds, Kenney,
Sgambati, Burling, Cilley, Janeway, Odell, Roberge, Kelly, Brag-
don, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, DeVries,
Letourneau, D'Allesandro, Estabrook, Downing, Hassan, Fuller
Clark.**

The following Senators voted No: None.

Yeas: 24 - Nays: 0

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 344-FN, relative to capital murder. Judiciary Committee. Interim Study, Vote 5-0. Senator Foster for the committee.

SENATOR FOSTER: Thank you, Madam President. I move SB 344-FN be referred to interim study. Senate Bill 344 sought to expand capital murder to include those who kill or try to kill multiple victims. We're very sensitive to the heinous crime committed in Conway at the Army Barracks Store when a recently paroled man took the lives of three innocent men who did nothing more than be at the wrong place at the wrong time. The Committee received extensive testimony on both sides of the matter. Some had the feeling that the bill wasn't quite ready to move forward. For example, it was unclear in the text of the bill what the term "resulting from" meant. And there was no definition in the bill as to "course of conduct." Those are both critical definitions, especially when we're talking about capital murder, to have right and to have clearly laid out in the legislation. The Committee is also aware that there are currently pending two capital cases, and challenges are being made to the current law. Expanding the law now, when it is being used for the first time in several years, we felt was not the best course of business, and we wanted to see how some of those challenges ultimately got resolved. Those facts and others led the Committee to believe that the study was the best option at this time. The Committee asks that Senate Bill 344 be referred to interim study and asks for your support. Thank you, Madam President.

(The Chair recognized Sen. Kenney to speak.)

SENATOR KENNEY: Thank you, Madam President. Obviously, this Senate Bill 44 [sic] is a very emotional bill for me because it is a bill that I never thought that I would be bringing before the Legislature, nor have I every really sponsored a capital punishment bill. But obviously what took place last year in July in my district, I suddenly realized that I want to stand up for those families and to have this debate, because there is a definition of "capital punishment" that is presently on the books that I think definitely needs to be expanded. I rise in opposition to the motion of interim study on Senate Bill 344. Initially, when I heard that this was going to interim study, I said to myself, "I can't believe this." I understand what Sen. Foster has just indicated and I can appreciate his comments. But it's my belief that we don't need to study the capital punishment law because we've always treated any expansion of the capital punishment law as an up-or-down vote. We already know that New Hampshire has a capital punishment law. The criteria includes the murder of a police officer, judge, sexual assault, kidnapping, and other public officials. But the criteria does not include multiple murders. As a sponsor, I really would like to have this bill voted up or down. At least the public will know that I'm willing to take a stand, have a position, rather than have the Senate not take a position with the vote of interim study. We know interim study in the second year of a term is a maneuver to take the easy way out. And I don't think that we should take the easy way out. I think we should vote on this today.

Senate Bill 344 was brought forward in an attempt to widen the criteria for the death penalty to include multiple murders. As many of you know,

last summer three people were killed in my district at the Army Surplus store in North Conway. It was because of this incident that I brought it to the attention of the Legislature that we should have multiple-killing death penalty law on the books. The families I spoke to have supported this bill, deserve a vote on this matter, and they deserve justice for their loved ones. We can, with this vote today, give future families of this, heinous crimes like these, a sense that in New Hampshire there's an opportunity for justice. For them to know that their daughter or son's killer at least may potentially face the harshest punishment a society can issue, gives them a sense of justice. If my daughter or son were killed in multiple killings, I know that the kind of justice that I would be looking for, and that if this ... and what if he will not disclose the location of my child's body, would knowing he might face the death penalty and his desire to get off the table maybe make him change his mind? I believe it would.

Are we saying today you can come to New Hampshire, kill one person in a kidnapping and you might face death, but you come to New Hampshire and possibly kill 30 people and the death penalty isn't even an option? I ask you, is that justice? One does not have to look far to realize that multiple killings have occurred at the national level at some of our learning institutions. And that since 1996, 18 multiple killings have happened here right in New Hampshire. It is time to send the bad guy a message that we're not going to take it anymore. We need the multiple-murder death penalty statute on the books for two reasons: One, I believe, as a deterrent. It is no mistake that a state with a strong multiple-murder statute develops a hard-nosed reputation. Second, we need to have the ability to use the death penalty as a bargaining chip to hang the guillotine over the perpetrator in case we need to know where he has buried the bodies. I know in this room here today, a lot of you, or some of you, are against the death penalty. Your vote on this does not mean that you favor, necessarily, the death penalty. What it means is that you agreed that we should be allowing our AG to have the option as we have with these other heinous crimes. Wouldn't you agree on this simple fact? Why would we take away a potential bargaining chip from the Attorney General who needs to find out more information about the murderer and to use the death penalty as a leverage to potentially find the dead bodies in a multiple-murder case. It does not make sense *not* to give the AG these bargaining chips.

There has not been an execution in New Hampshire since 1939, and we take the capital murder cases very seriously, and we make sure that we do it the right way. The Briggs case will bring a lot of validity to the capital punishment argument and no doubt will set forth many new precedents for carrying out capital murder cases in New Hampshire. Undoubtedly, you will hear that it costs too much money to try a capital murder case. All I can say to you is that tell that to the victim's parents or relatives who know the person who took their loved ones lives away, will get a warm bed, they'll get three meals, magazines and healthcare for the rest of their lives. As a taxpayer, we will foot the bill and not know if justice was ever done. We need to get tough in this state on crime. The only way we're going to send a – the only way we're going to send a multiple murderer a strong message is to have the capital punishment for these heinous crimes on the books.

Now, lastly, I just wanted to make the point, is that the AG needs the toolbox. And in that toolbox it could be a tape measure, it could be a screwdriver, but there needs to be a big hammer in that toolbox when it

comes to prosecuting capital punishment cases, and that is the hammer. And New Hampshire, when it comes to multiple murders, and the State of New Hampshire should have a big hammer. And I think it's something, it's one tool that the AG's Office needs. And having experienced it in my district, I never want to see it happen again in any other district, but I have to say we have to be prepared and we need to send the bad guy a message. Thank you, Madam President.

(The Chair recognized Sen. Gottesman for a question of Sen. Kenney.)

SENATOR GOTTESMAN: Sen. Kenney, I detected a note of criticism toward the Committee. But as I look at the committee report, and having attended, the vote was 5 to 0. Were you aware of that?

SENATOR KENNEY: Sen. Gottesman, that's a rhetorical question. I am quite aware that it's 5 to 0. And I'm quite aware of what came out of that committee report.

SENATOR GOTTESMAN: Sen. Kenney, were you aware as to who made the motion for interim study after full discussion at the Committee? And who seconded the motion for interim study at the Committee?

SENATOR KENNEY: Sen. Gottesman, I was not at that executive session.

SENATOR GOTTESMAN: Would you believe that it was members of your party who did that?

SENATOR KENNEY: Sen. Gottesman, first of all, I'm disappointed you brought up party politics. This is not about party politics; this is about the citizens of our state and making sure that we have strong laws on the books. It's got nothing to do with if you're a Democrat, an Independent or Republican. It has to do with the fact that I had constituents in my district that were killed, and that I am bringing legislation before the Senate to make sure, like other states, that when it comes to multiple killings, that we have a strong capital punishment law on the books. It has nothing to do with what party brought in a motion or brought in the legislation.

SENATOR GOTTESMAN: May I? Sen. Kenney, I only react to this comment about "party" because you seem to think that somebody did something insidious on that committee, and had you been at that meeting, you would have understood that – that this was a working discussion by a group of people, regardless of party, regardless of affiliation, who wanted to get to the end of a story that was incomplete. Would you believe that that was the case at the time of our meeting?

SENATOR KENNEY: Sen. Gottesman, I will reiterate myself. I was not at the executive session. I do not know what happened in the Judiciary Committee as far as their dialogue in regards to this reporting-out of this committee report. All's I am saying, that other states have this language on the books and that New Hampshire needs to get tough on its capital punishment laws in regard to multiple killings.

SENATOR GOTTESMAN: One last question, Madam President. Before you brought this bill, did you ever consult with the Attorney General or anyone in the Attorney General's Office to get their opinion as to whether this legislation was something that they were looking for?

SENATOR KENNEY: All's I know, Sen. Gottesman, is that the Attorney General came in to the Judiciary Committee the day of the hearing in support of this bill. Because when I talked to the Attorney General

last summer, at an event in Nashua, and I was sitting at the table and I leaned over to the Attorney General, Kelly Ayotte, and I said: "Madam Attorney General, do we have a multiple-killing death penalty law on the books?" And she said, "Regretfully, we don't, Sen. Kenney." And I looked at her in amazement and I said, "You're telling me that someone can walk into our state, conduct multiple killings, whether it be at a mall or a university, and that we cannot try them for the capital punishment, and yet someone who has kidnapped, that we could try them for capital punishment." And it was at that point that I said to myself that I was going to file a bill, get a hold of the families and say we need to have this on the books for the Attorney General so that they can reach back into that toolbox to make sure that it's something that we can say to our citizens that we're not going to take it anymore.

SENATOR GOTTESMAN: So do I take that as your unequivocal statement that you ran this by the Attorney General before you filed this legislation?

SENATOR KENNEY: Sen. Gottesman, if you're talking about word-for-word, no.

SENATOR GOTTESMAN: Thank you.

SENATOR KENNEY: But I will comment that I did run it past the Attorney General, because I had a conversation with her on it.

(The Chair recognized Sen. Clegg to speak.)

SENATOR CLEGG: Thank you, Madam President. I rise in support of the committee recommendation. And let me just explain that we didn't take the easy way out. In fact, what we did was we made a heck of a lot more work for ourselves. We heard from the Attorney General who came and she brought an amendment. So we know that there was a need, but we also know that there was a need to make some more changes. And then we listened to what I consider one of the best criminal attorneys in the State of New Hampshire. And he made me start to worry that if I passed this law, he was just going to make a mockery of the Legislature. He had a problem with the fact that we said, "resulting from." He says there's no definition. Then he had a problem regarding the term "course of conduct." He explained that our own Supreme Court had considerable difficulty understanding what that meant. So while we all thought that the guy that went and shot three people ought to pay dearly for it, we also wanted to make sure that when we set that up, we didn't make big mistakes. Now, here's some of the mistakes we thought we might make. The way the bill was written, the scenario came up that a 16-year-old, driving in the middle of a snowstorm, thinking like all 16-year-olds that he's the greatest driver in the world, spins out on the highway, crashes into a bunch of cars, causes a big accident, kills two people. Do we really intend to perform capital punishment on that 16-year-old? I don't think that's what our intention was. And we kept coming up with more and more scenarios, the way the bill was written, because we couldn't properly define "resulting from" or "course of conduct." So obviously, the "course of conduct" he had taken doing 55 in a blizzard, obviously was the reason why two people died. But we've always been more discerning than that in this state. We've reserved capital punishment when you kill a police officer. I think when you kill a firefighter now in the course of their duty. So do we really want to extend that all the way down to the bottom and say a kid who causes an accident that kills two people, under this statute, gets the death penalty? Now, we're not going to kill him, we're just going

to bargain with him. What are we going to bargain with? Somebody like Mike Iacopino's going to come in and he's going to say: Well, first off, what does this mean? Oh, you can't explain it. Well, maybe that's not what they meant, Your honor. So we go to the Supreme Court and we find out not only have we not done anything to the guy who takes a gun and kills three people just because that's the way he is, but maybe we've also ruined it so that when the guy that shoots the police officer in the middle of an alley, maybe he finds a little solace in this bill and gets to go around the corner and say: Well, just put me away for life. That's not what I wanted to do, that's not what my colleagues wanted to do.

And I'll also point out we're not partisan on that committee. We have three lawyers and two regular people – (laughter) – and we actually sit and we do the best we can. We talk about it, we run scenarios by. Because anything that comes out of the Judiciary Committee we want to make sure in ten years is still there and that we didn't make a mistake, we didn't send somebody to jail, we didn't send somebody to their death by accident. We wanted to make sure everything we do, and we understand that everything we do is something that the rest of the state has to deal with every day in their own personal lives. So I ask you to help the Judiciary Committee, send it back to interim study and let us at least take a good look at what we need to do to make sure that kind of a person that comes into a store and just shoots three people gets the punishment he deserves; but the person who gets in an accident on the highway and kills two people, that's not the same level of a crime, in my opinion, and we need to make sure we don't make it that way. Thank you.

(The Chair recognized Sen. Kenney for a question of Sen. Clegg.)

SENATOR KENNEY: Thank you, Sen. Clegg. First of all, this is an issue that I firmly believe that the Legislature should jump in with two feet and try to get it right. And I also believe that what this legislation does is it provides an option for the Attorney General to decide if they want to prosecute a case when it comes to multiple killings. Now a 16-year-old who accidentally kills two people, would you not agree that that is probably not going to be prosecuted as an option by the Attorney General, based off of how the Attorney General is going to perceive that particular incident?

SENATOR CLEGG: Senator, since I've been here, through a number of Attorney Generals, my answer to your question is going to be no. I've seen some Attorney Generals who were very quick to do whatever they could do, and I've seen others who have been a little more lax and waited to see what they thought might be the right thing. Those who are more interested in standing up before a television camera might very well take that 16-year-old and apply this bill to it. I agree with you. We should jump in with both feet. But before we come out of the water, we ought to know exactly how wet we are. And the only way to make sure that we don't make a mistake is to do it right the first time.

SENATOR KENNEY: And just a second question. And you would agree that we have not brought forward the capital punishment case since 1939, and that perhaps that we do need the ability to put some muscle into questions about multiple-killing issues in the State of New Hampshire?

SENATOR CLEGG: Well, I'll agree that we have a capital murder case right now from the Briggs murder, but I'll also agree that we need to make sure that those who come in and do multiple murders should be dealt with equally as effective.

SENATOR KENNEY: Thank you.

(The Chair recognized Sen. Gatsas for a question of Sen. Clegg.)

SENATOR GATSAS: Sen. Clegg, the attorney that you were speaking of, is that the same attorney that testified that there was no gang problems in the City of Manchester?

SENATOR CLEGG: I don't know. Maybe he's got some. But you realize, too, that I'm not the attorney, there's two – (laughter).

SENATOR GATSAS: Thank you, Senator.

(The Chair introduced Speaker Donna Sytek as a guest in the Senate Chamber.)

(The Chair recognized Sen. Roberge to welcome the Vesta Roy Series' "Excellence in Public Service" participants and leaders.)

(The Chair introduced Sen. Barnes to speak.)

SENATOR BARNES: Thank you, Madam President. After I speak, and anyone else that maybe is lined up, I'd like to move the question. But before I do that – (laughter) – before I do that, I would like to say that as an outsider, I'm not on that committee, I'm not one of the lawyers, and I'm not one of the other two folks that are on there, it seems to me that – and I'm proud of the two Senators on the Committee for speaking their piece, because you have pride in your committee. I think we all have pride in our committees and we don't like somebody maybe thinking that they're taking a shot at ya. But I don't think Sen. Kenney was taking a shot at your committee or what you guys and gals did on that committee. I think all Sen. Kenney was doing was speaking on behalf of some constituents that had a horrible problem. And I, sitting out here as an outsider, listening to very carefully, I don't think there was any slight on the Committee; just trying to do what we all try to do, is to help our constituents. And I hope the Committee can understand that, because I did. I know people get ruffled, and I get ruffled, but our committees are very dear to us, but so are our constituents. Thank you.

COMMITTEE REPORTS, RESUMED

The question is on the adoption of committee recommendation of Refer to Interim Study on SB 344-FN.

A roll call was requested by Sen. Kenney, seconded by Sen. Barnes.

Recess/Out of recess.

The question is on the adoption of committee recommendation of Refer to Interim Study on SB 344-FN.

A roll call had been requested.

The following Senators voted Yes: Gallus, Reynolds, Sgambati, Burling, Cilley, Janeway, Odell, Roberge, Kelly, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, DeVries, Letourneau, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.

The following Senators voted No: Kenney, Barnes.

Yeas: 22 - Nays: 2

Motion of Refer to Interim Study adopted.

SB 351-FN, requiring that funds in the civil legal services fund be distributed to New Hampshire Legal Assistance to establish an office at a location in Carroll county. Judiciary Committee. Ought to Pass, Vote 5-0. Senator Clegg for the committee.

SENATOR CLEGG: Thank you, Madam President. I move Senate Bill 351 ought to pass. The legislation requires that monies in the Civil Legal Services Fund be distributed to New Hampshire Legal Assistance to establish an office at a location in Carroll County. The Committee is greatly aware of the work done by New Hampshire Legal Assistance, as well as the tremendous needs in the part of our state where their services are difficult to access. This is particularly true for Carroll County. The Committee unanimously supports the legislation, but strongly opposes the taking of any monies from any existing Legal Assistance location to fund the one in Carroll County. We ask that the bill be referred to the Senate Finance Committee so that additional funding sources can be found to provide the services in Carroll County, yeah, in Carroll "County," which would not threaten any existing legal service in any other part of the state. The Judiciary Committee recommends that the bill be adopted and asks for your support. Thank you.

(The Chair recognized Sen. Reynolds to speak.)

SENATOR REYNOLDS: Thank you, Madam President. Madam President, I just want to rise in support of this bill. Many, many years ago when I was a young lawyer, I had the privilege of practicing law in Carroll County. We do have an Office of Legal Assistance in Grafton County in Littleton, and I just want to say on the record that attorneys who work for New Hampshire Legal Assistance work under very, very difficult circumstances and they work in parts of our state like Grafton County, under very difficult circumstances to represent the poor and indigent in New Hampshire. And when I was practicing in Carroll County, Carroll County has the same kinds of issues and struggles with indigent representation. And I understand that the bill is going to Finance, but I do want to support the policy, and I'm glad that Sen. Kenney brought this bill forward. Thank you.

(The Chair recognized Sen. Kenney to speak.)

SENATOR KENNEY: Thank you, Madam President. I just want to let the Senate Judiciary know on this 5 to 0 vote that I will be supporting it. And I appreciate all their hard work, and their bipartisanship that goes on in that committee. I first want to say that over the years that I have witnessed on this floor of the Senate a Legal Assistance Office that was opened, or created and opened in Concord and Nashua, and it's through this legislation that I realized that Carroll County, which is really the second poorest county and very much underserved, and very much where legal assistance is needed. You don't have to go far to realize that in our county you have to travel to Littleton or you have to travel to Portsmouth for the uninsured, or excuse me, the people that need legal representation, they have to travel a great distance. And also, if you recall this Monday evening, this past Monday evening, Chief Justice Broderick talked about the importance of having legal representation in court where he said there's a lot of folks that get to the court and they don't – but they have to represent themselves because they don't have the ability to afford, to afford an attorney. And he said that that's a rapid ... a rampant issue in the State of New Hampshire, having legal representation for the low-income people. And lastly, New Hampshire does a pretty good job, as far as its legal community, when it comes to pro bono work, but we can do better. And we need to look to places like Carroll County to make sure that we can get some more help up in that part of the state. So I appreciate the Senate Judiciary Committee's action on this bill, at least up to this point, to the policy. I understand – I

understand it's going to be going to Senate Finance and hopefully they can manipulate some of the financing, Sen. D'Allesandro, and maybe help us up in Carroll County, your old neck-of-the-woods. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on SB 351-FN.

Motion of adoption of Ought to Pass adopted, bill ordered to Committee on Finance (Rule 26).

SB 401, relative to recommendations of marital masters. Judiciary Committee. Inexpedient to Legislate, Vote 5-0. Senator Gottesman for the committee.

SENATOR GOTTESMAN: Thank you, Madam President. I move Senate Bill 401 as inexpedient to legislate. This bill sought to remove the requirement that recommendations of marital masters be signed by a judge. It also sought to allow parties to consent to entry of final judgments of marital masters. Similar legislation was before the Senate last year in Senate Bill 112 and was found to be unconstitutional in a requested opinion of the New Hampshire Supreme Court. While the Court gave guidance on how this could possibly be achieved, the Judiciary Committee, in its impartial way, has concerns that this is not in the best interest of those served in the Family Division, and especially to our pro se litigants, those who are self-represented and do not have access to legal counsel. We fear that a litigant, not understanding what they are signing away, could possibly agree to this not knowing the possible dynamics. An additional concern that the Judiciary Committee had was that marital masters are not officers of the court and are therefore not able to issue orders. If they were able to issue orders, some of us feel that the State could be in jeopardy of losing federal funding that comes in because of the role the marital masters play in Family Court cases. For all of these reasons, the Judiciary Committee recommends that Senate Bill 401 be found as inexpedient to legislate and asks your support. Thank you.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on SB 401.

Motion of Inexpedient to Legislate adopted.

SB 443, requiring notice to the probate court prior to the sale of real estate by an administrator or executor. Judiciary Committee. Inexpedient to Legislate, Vote 5-0. Senator Reynolds for the committee.

SENATOR REYNOLDS: Thank you, Madam President. I move SB 443 as inexpedient to legislate. Senate Bill 443 sought to require notice to the Probate Court prior to the sale of real estate by an administrator or executor. While we appreciate the court's intention in filing this legislation, the Judiciary Committee had clear concerns that it would have had the unintended consequences of actually making the Probate system more complicated and more costly in selling real estate by having additional costs and overlay to a process that is working well. The Judiciary Committee recommends that SB 443 be voted inexpedient to legislate and asks for your support. Thank you.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on SB 443.

Motion of Inexpedient to Legislate adopted.

SB 375-L, allowing veterinarians to inform town and city clerks about dogs that have been euthanized. Public and Municipal Affairs Committee. Ought to Pass with Amendment, Vote 6-0. Senator Roberge for the committee.

Public and Municipal Affairs

February 13, 2008

2008-0578s

08/10

Amendment to SB 375-LOCAL

Amend the bill by replacing section 1 with the following:

1 Records; Dog Licenses; Veterinarians' Reports. Amend RSA 466:11 to read as follows:

466:11 Records.

I. Clerks of towns and cities shall keep a record of all licenses issued by them, with the names of the keepers or owners of dogs licensed, and the names, registered numbers and descriptions of all such dogs. Clerks of towns and cities shall furnish yearly to the local governing body a list of those owners who have failed to renew their license for use in preparing the warrant of unlicensed dogs.

II. *With the owner's consent, a veterinarian may report the euthanizing or death during treatment of a licensed dog to the town or city clerk in order to have the record reflect that the dog was euthanized or died. A veterinarian providing such a report may also provide the town or city clerk with the mailing and street addresses of the owner of the dog. Written reports, if any, shall be destroyed after receipt by the town clerk.*

SENATOR ROBERGE: Thank you, Madam President. I move Senate Bill 375-Local ought to pass with amendment. This amended bill allows veterinarians to inform town/city clerks about dogs that have been euthanized or died, and that written reports will be destroyed after the receipt by the town clerk. Passage of this legislation will allow town clerks to update their records much faster and avoid sending out unnecessary dog license renewal forms. The Public and Municipal Affairs Committee asks your support for Senate Bill 375-Local with amendment, ought to pass. Thank you.

The question is on the adoption of Committee Amendment 0578s.

Committee Amendment 0578s adopted.

Sen. Hassan offered a floor amendment.

Sen. Hassan, Dist. 23

Sen. Burling, Dist. 5

February 20, 2008

2008-0734s

08/09

Floor Amendment to SB 375-LOCAL

Amend the title of the bill by replacing it with the following:

AN ACT allowing veterinarians to inform town and city clerks about dogs that have been euthanized or died during treatment.

Amend RSA 466:11, II as inserted by section 1 of the bill by replacing it with the following:

II. *With the owner's consent, a veterinarian may report the euthanizing or death during treatment of a licensed dog to the town or city clerk in order to have the record reflect that the dog*

was euthanized or died. A veterinarian providing such a report may also provide the town or city clerk with the mailing and street addresses of the owner of the dog. Written reports, if any, shall be destroyed after receipt by the town or city clerk, and any resulting record reflecting the dog's death shall not specify the manner or cause of death.

2008-0734s

AMENDED ANALYSIS

This bill allows veterinarians to inform town and city clerks about dogs that have been euthanized or died during treatment.

SENATOR HASSAN: Thank you, Madam President, I offer a friendly amendment, Amendment 0734s. May I speak to it as it's being passed out?

PRESIDENT LARSEN: You may. Floor Amendment 0734s has been proposed. You may speak to it as it's being distributed.

SENATOR HASSAN: Thank you. This floor amendment is simply meant to clarify that after the veterinarian notifies town or municipal officials about the death of the animal, that the resulting record will not reflect the cause of death. We heard from a number of dog owners who thought that that was the most appropriate way to handle it, and there was some ambiguity in the committee amendment. Thank you.

The question is on the adoption of Floor Amendment 0734s.

Floor Amendment 0734s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 375-L.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 513-FN, relative to fighting animals. Public and Municipal Affairs Committee. Ought to Pass with Amendment, Vote 4-0. Senator Roberge for the committee.

Public and Municipal Affairs

February 12, 2008

2008-0576s

08/03

Amendment to SB 513-FN

Amend the bill by replacing section 1 with the following:

1 New Paragraphs; Exhibitions of Fighting Animals. Amend RSA 644:8-a by inserting after paragraph III the following new paragraphs:

IV. Upon conviction of a violation of this section, all animals used or to be used in fighting, and all equipment, paraphernalia, and money involved in a violation of this section shall be forfeited to the state. Proceeds of any such forfeiture may be used to reimburse local government and state agencies for the costs of prosecution of animal fighting cases. Proceeds which are not needed for such reimbursement shall be deposited in the companion animal neutering fund, established in RSA 437-A:4-a.

V. In addition to other penalties prescribed by law, the court may issue an order prohibiting a person who is convicted of a violation of this section from owning or possessing any animals within the species that is the subject of the conviction, or any animals kept for the purpose of fighting or baiting, for a period of time determined by the court.

SENATOR ROBERGE: Thank you, Madam President. I move Senate Bill 513-FN ought to pass with amendment. This bill allows the State to confiscate animals used in illegal fights. It also allows the State to prohibit a person convicted of conducting illegal exhibitions of fighting animals from having custody or control over certain animals. The amendment includes a provision that allows any money confiscated from such violations to be used to reimburse any agencies involved in prosecution of the offender and that any excess money be deposited in the state Companion Animal Neutering Fund. The topic of fighting animals has been in the news in recent months and it has occurred in New Hampshire. It is important for the State to make its stance even stronger against such heinous activity. The Public, Public and Municipal Affairs Committee asks your support for ought to pass as amended. Thank you.

The question is on the adoption of Committee Amendment 0576s.

Committee Amendment 0576s adopted.

Sen. Hassan offered a floor amendment.

Sen. Hassan, Dist. 23

Sen. Burling, Dist. 5

February 15, 2008

2008-0652s

08/09

Floor Amendment to SB 513-FN

Amend RSA 644:8-a, IV as inserted by section 1 of the bill by replacing it with the following:

IV. Upon conviction of a violation of this section, all animals used or to be used in fighting, and all equipment, paraphernalia, and money involved in a violation of this section shall be forfeited to the state. Proceeds of any such forfeiture shall be used to reimburse local government and state agencies for the costs of prosecution of animal fighting cases. Proceeds which are not needed for such reimbursement shall be deposited in the companion animal neutering fund, established in RSA 437-A:4-a.

SENATOR HASSAN: Thank you, Madam President. I offer Floor Amendment 0652s which again is a friendly amendment. It changes one word in the bill as we just voted on it. The word is in line four. In the bill as we just passed it, it said that the amount of money, or the value of the forfeit "may" be forfeited to the states, to the State, and that the proceeds of any such forfeiture, in line five, what we just passed, said, "may" be used to reimburse local government. And this amendment changes that word to "*shall* be used to reimburse local government and state agencies for the costs of prosecution of animal fighting cases." The intention of the Committee was to ensure that the local officials would be reimbursed for the cost of both investigating and prosecuting these cases, and this floor amendment just clarifies that the money will indeed go to the local officials first. Thank you.

The question is on the adoption of Floor Amendment 0652s.

Floor Amendment 0652s adopted.

SENATOR KENNEY: Thank you, Madam President. I rise in support of Senate Bill 513 and also support the amendment. This bill has become New Hampshire's "Mike Vick" bill to some degree. I'd like to say that I was encouraged to file this legislation not just because of the news stories surrounding the horrible case of abuse involving Mike Vick, but also because of a woman in my district from North Conway named Ginny

Bumpstead. Ginny has spent a better part of her life caring about and for dogs and has been a long-time patron of the Conway Animal Humane Society. If the world was filled of "Ginny Bumpsteads," and I may add, Sen. Sheila Roberge, there would be no need for shelters. After having long discussions with her, which included my own memories of growing up with three German Shepherds and the important role that animals play in our lives, I knew that this was the year it was important for me to help in whatever way I could to strengthen our laws for those who would harm "man's best friend" and really all our animals. And just in case you're a cat person and not a dog person, this bill actually says "animal fighting." Not just "dog fighting," but also "animal fighting." What I really want to do is to put the dog fighters out of business in the State of New Hampshire, like many of us. Too many times we hear stories of people who pay their fine, or get out of jail, and go right back into business. Under this new law, per the judge's order, you will no longer be allowed to own the dogs or types of dogs you have abused. The judge may put in his order that you are essentially banned in the State of New Hampshire for owning certain species of dogs. This will put these inhumane thugs out of business permanently in our state. It's a fitting punishment. The State will also benefit from the other provisions of this bill, which would allow us to confiscate equipment, paraphernalia and money of those convicted. So I hope that the Senate would support this bill. Thank you, Madam President.

The question is on the adoption of Ought to Pass as Amended on SB 513-FN.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SPECIAL ORDER

SB 434, relative to providers of electronic communication services. Energy, Environment and Economic Development Committee. Ought to Pass, Vote 5-0. Senator Hassan for the committee.

SENATOR HASSAN: Thank you, Madam President. I move Senate Bill 434 ought to pass. This bill updates the law that provides the Attorney General power to subpoena records from a communications service provider when there are grounds to believe that a customer is using the service for an unlawful purpose. Currently, the statute refers to "communications common carriers" when describing the businesses to which a subpoena may be issued. Senate Bill 434 updates that reference by using the term "providers of electric communication service and remote computing services." This bill, requested by the Attorney General's Office, makes the statute more relevant to today's technology and brings it in line with federal law. The information gathered through the use of these subpoenas is very limited, but aids in investigations related to issues of child safety and endangerment and other unlawful conduct that could be related to terrorism. Please join the Energy, Environment and Economic Development Committee and vote ought to pass. Thank you.

(The Chair recognized Sen. Gatsas to speak.)

Sen. Gatsas offered a floor amendment.

Sen. Gatsas, Dist. 16

Sen. Clegg, Dist. 14

Sen. Roberge, Dist. 9

Sen. Kenney, Dist. 3

Sen. Letourneau, Dist. 19
Sen. Odell, Dist. 8
Sen. Barnes, Dist. 17
Sen. Downing, Dist. 22
February 21, 2008
2008-0763s
06/09

Floor Amendment to SB 434

Amend the title of the bill by replacing it with the following:

AN ACT relative to providers of electronic communication services and an extension for compliance with the REAL ID Act of 2005.

Amend the bill by inserting after section 1 the following and renumbering the original section 2 to read as 3:

2 REAL ID; Extension. The governor, or designee, shall request an extension from the U.S. Department of Homeland Security of the deadline for compliance with the REAL ID Act of 2005. The extension shall not commit New Hampshire to any specific action.

2008-0763s

AMENDED ANALYSIS

This bill:

I. Deletes references to communications common carriers and adds references to providers of electronic communications service and remote computing services.

II. Requires the governor to request an extension from the U.S. Department of Homeland Security of the deadline for compliance with the REAL ID Act of 2005.

SENATOR GATSAS: Thank you, Madam President. I'd like to speak to Amendment 0763s.

PRESIDENT LARSEN: You may speak to 0763s which has been proposed, and you may speak as it's being distributed.

SENATOR GATSAS: Thank you, Madam President. The amendment that is being passed out talks about the REAL ID Act. I think that everybody will understand that the time is coming upon us. There are some significant dates that will appear both in March, May and in December. The amendment is very clear. It only asks the Governor or the designee, shall "request an extension from the United States Department of Homeland Security of the deadline for compliance with the REAL ID Act of 2005." The extension shall not commit New Hampshire to any specific action. I was confronted by the Airport Director in Manchester on Tuesday evening with great concerns of what's happening at the airport. They are now separating, actually two lines, so that people with passports can travel through one, and people without passports or identification would travel through another. The significant dates that are in hand, and certainly – I have a press release that comes from the Secretary, Michael Chertoff, who is the Homeland Security person in the lead at the federal government. March 7th, if we all remember, we had \$3 million that was in the REAL ID Act that was coming to New Hampshire for updating of the equipment and moving it forward that Sen. Gregg had put in a piece of legislation. Governor and Council didn't accept those funds. They were turned back. They now sit in with the other, I believe it's \$83 million that is available for states to get grants on. The grant date that

the paperwork must be filed is March 7th, 2008. The request date for an extension, but not committing to the Act of REAL ID, is March 31st of 2008. If we don't file by the seventh, we don't participate in the grant. If we don't ask for a request for extension by the 31st of March, come May 11, we're going to have to move forward with showing passports to get on planes. If we ask for the request of extension, it's extended to December 31, 2009. This isn't going to go away. There are only five states left that haven't opted in: New Hampshire, Maine, Delaware, Montana, and I believe Wyoming. Everybody else – there were states that said they weren't going to opt in because they didn't like the price, the price is now – we're talking about \$8 for an ID – has changed. So I suggest that the Legislature take a very serious look at this, either in the very near future, meaning this session, or at least by the end of the next session, because in May, families in New Hampshire could have a problem when they arrive at an airport. And I don't think any of us want that. Thank you, Madam President.

(The Chair recognized Sen. Letourneau for a question of Sen. Gatsas.)

SENATOR LETOURNEAU: Sen. Gatsas, does this only mean that New Hampshire residents can't get on an airplane in New Hampshire?

SENATOR GATSAS: No, this is around the country. This isn't just something that's happening in New Hampshire. Certainly, there are some press releases here – and the press release, I can tell you, is not one page; it's probably 25. So I would suggest that we take a look at it, and look at in a manner that's gonna protect the people in New Hampshire.

SENATOR LETOURNEAU: So what you're telling me is if I happened to be in Washington State and I want to come home and this goes into effect, my driver's license won't let me get on the airplane, without going through a second search.

SENATOR GATSAS: If the State of Washington, the way I understand it, if they're complying with REAL ID, then you're going to have to do that. On May 11th, if they've already complied in Washington, you may not be able to even get through on a second search.

SENATOR LETOURNEAU: Thank you.

(The Chair recognized Sen. Hassan to speak.)

SENATOR HASSAN: Thank you, Madam President. I just wanted to note that as I read this amendment, it "orders" the Governor to make this request, and I think that's inappropriate, so I will be voting against it.

(The Chair recognized Sen. Burling to speak.)

SENATOR BURLING: Thank you, Madam President. I rise to oppose this version of the amendment. I would say that between the time that we first reached this bill and this point in time, there were efforts to work out a compromise solution. We could not agree as to the language. There will be a floor amendment that follows the action on this one, which I think addresses the Governor in more respectful language. It makes an explicit reference to the REAL ID bill, which we just passed last year, in a critical way. And it does seek the attention of our federal delegation, who, I believe, really ought to be helping us with this problem since they're the ones who voted for it in the first place. And I would ask my colleagues to vote down this floor amendment and vote yes on the subsequent one.

(The Chair recognized Sen. Gatsas to speak.)

SENATOR GATSAS: Thank you. It seems as though that when we had a 19 to 5 vote we were all partisan. Now all of a sudden we're jumping on other situations. That's uncalled for in this chamber. There was no "order" of the Governor doing anything. This is an amendment on a piece of legislation that "suggests" and "asks" that he would do it. I think it's important that we understand that only he can do it. But we passed legislation in here, last year, that said we would not participate. We would *not* participate. I offer the press release, and I suggest you all read it. Because the outcome of not participating is going to be awful great to our constituents in this state. We should read it and understand it. We're not going to be able to thumb our noses to REAL ID. And let's all remember that \$3 million was coming from our delegation, and the Governor and Council refused to take it. And that's a clear point. The Governor and Council refused to take it. Thank you, Madam President.

(The Chair recognized Sen. Barnes for a question of Sen. Gatsas.)

SENATOR BARNES: Senator, you mentioned three dates, as you went through your testimony [sic]. One of them, I think was March 7th of this year?

SENATOR GATSAS: Correct.

SENATOR BARNES: How are we going to get this thing through by March 7th? Or is it not important that we get it through by March 7th?

SENATOR GATSAS: I can't address that question, Senator. Only the Governor – they're right now, from my understanding, and I guess I'll read: "DHS has submitted an assessment questionnaire to New Hampshire, but have yet to receive it back. Without such information, DHS does not know exactly what New Hampshire has to do to become REAL ID compliant." So I can't tell you that.

SENATOR BARNES: That March 7th date, is it or is it not important?

SENATOR GATSAS: March 7th is when the – the date the grants are stopped, that they stop processing grants.

SENATOR BARNES: So we're going to miss the grant because we don't come back into session till ...

SENATOR GATSAS: Senator, it has nothing to do with us. If the Governor, today, sends an e-mail, asking DHS, that we will look at it and we will talk about it, that's all they need to do. After that, for the grant, March 7th, that would be on the Governor's table, if he's gonna go for it.

SENATOR BARNES: So if we pass this here today, it doesn't have to go to the House. All the Governor has to do is pick up the phone or send a letter out?

SENATOR GATSAS: That's correct.

SENATOR BARNES: It doesn't have to have the House approval.

SENATOR GATSAS: That's correct.

SENATOR BARNES: Thank you very much.

(The Chair recognized Sen. D'Allesandro to speak.)

SENATOR D'ALLESANDRO: Thank you, Madam President. I appreciate that. I think Sen. Gatsas brings up a good point, but I think it takes the entire delegation to address this. That's our Congressional delegation.

We had a couple of Reps. who weren't in office when this bill was signed, and it seems to me that the force of a unified front would make a lot of sense. We have two Senators – actually, we have a Senator who sits on the Appropriations Committee, who has some say, and recognize the fact that – I noticed in that article that Sen. Libby Mitchell from the State of Maine was very concerned about this, and I served with Libby many, many years ago on a couple of boards. So I think if we're going to do something, we ought to do something that asks for all of our elected officials at the federal, and certainly gubernatorial level, to make that move and to make it expeditiously. Thank you.

(The Chair recognized Sen. Odell to speak.)

SENATOR ODELL: Thank you, Madam President. Just for clarification, from a document that was sent by the Department of Homeland Security ... basically, it's very clear. In fact, it is extremely simple. The Governor or designee simply needs to request the extension, and it can be done as simply as sending Darrell Williams or Richard Barth at DHS, a letter or even an e-mail. The request need say nothing more than "New Hampshire requests the extension." The extension at this point does not commit the state to any specific action. The Congressional delegation is not part of this process. It's a very simple process that other states are using, where their Governor has just gone ahead and requested, just as it says right here. But the consequences are, I'll just read one, a couple of lines: "With regard to the consequences of rejecting REAL ID, the legislation is pretty clear that DL/ID holders in noncompliant states will be restricted from using those documents for purposes of boarding domestic flights, entering certain federal buildings and nuclear facilities." So that's pretty clear. And that's dated February 20th.

(The Chair recognized Sen. Foster for a question of Sen. Odell.)

SENATOR FOSTER: Sen. Odell, you indicated that it's just an e-mail or a communication. Is it automatically granted, when the request is made?

SENATOR ODELL: It sounds that way. If you read this document, it actually sounds that way. As long as you –

SENATOR FOSTER: So the sense of some would be that if the Congressional delegation were supporting the request, it would be more likely to be granted, if there was any question that it wouldn't be.

SENATOR ODELL: It doesn't appear to be that in this communication that came back from the Department of Homeland Security. It's really a chief executive of the state directly to the Department to request the extension. It's not a – it doesn't have anything to do with the legislative process. It has to do with the simple request of the Governor's Office. And it's made here. Even the fact that they say it can even be an e-mail. It doesn't sound like it's very complicated. The time factor makes it a little bit more complicated. And the day that this would be come effective for the people of New Hampshire, if we're noncompliant or don't have the extension, will be on Mother's Day in May.

SENATOR FOSTER: Thank you.

The question is on the adoption of Floor Amendment 0763s.

A roll call was requested by Sen. Gatsas, seconded by Sen. Barnes.

The following Senators voted Yes: Gallus, Kenney, Odell, Roberge, Bragdon, Clegg, Gatsas, Barnes, Letourneau, Downing.

The following Senators voted No: Reynolds, Sgambati, Burling, Cilley, Janeway, Kelly, Gottesman, Foster, Larsen, DeVries, D'Allesandro, Estabrook, Hassan, Fuller Clark.

Yeas: 10 - Nays: 14

Floor Amendment 0763s failed.

Sen. Burling offered a floor amendment.

Sen. Burling, Dist. 5

Sen. Reynolds, Dist. 2

Sen. Sgambati, Dist. 4

Sen. Cilley, Dist. 6

Sen. Janeway, Dist. 7

Sen. Kelly, Dist. 10

Sen. Gottesman, Dist. 12

Sen. Foster, Dist. 13

Sen. Larsen, Dist. 15

Sen. DeVries, Dist. 18

Sen. D'Allesandro, Dist. 20

Sen. Estabrook, Dist. 21

Sen. Hassan, Dist. 23

Sen. Fuller Clark, Dist. 24

February 21, 2008

2008-0771s

09/04

Floor Amendment to SB 434

Amend the title of the bill by replacing it with the following:

AN ACT relative to providers of electronic communication services and an extension for compliance with the REAL ID Act of 2005.

Amend the bill by replacing all after section 1 with the following:

2 REAL ID; Extension. The governor, or designee, is requested to apply for an extension from the federal government of the deadline for compliance with the REAL ID Act of 2005. Such a request shall not constitute "participation" in REAL ID in violation of state law. The governor, or designee, shall request the assistance of the New Hampshire federal delegation in securing the necessary extension.

3 Effective Date.

I. Section 2 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect 60 days after its passage.

2008-0771s

AMENDED ANALYSIS

This bill

I. Deletes references to communications common carriers and adds references to providers of electronic communications service and remote computing services.

II. Requests the governor to apply for an extension from the federal government of the deadline for compliance with the REAL ID Act of 2005.

SENATOR BURLING: Thank you, Madam President. Madam President, I move the adoption of Floor Amendment 0771s. And if I may, I'll speak to it while the copies are being handed out.

PRESIDENT LARSEN: You may speak to that motion [sic].

SENATOR BURLING: Thank you. We don't disagree about the principle here of requesting the Governor to make this application for an extension. The point is, there are a couple of ways of saying that. One, it is appropriate, in our view, to request the Governor, not order him to do it. The second is, it isn't, Sen. Odell, simply federal ID law which is involved here, it is also our state ID law. So when you read from an e-mail which is apparently sent from Washington, which the rest of us didn't get, I would like to just point out that we passed a bill last year which became the law of this state that specifically rejects participation in the REAL ID bill. So the next sentence in this proposal is essential. Because it says, "Such a request shall not constitute 'participation' in REAL ID in violation of state law." We don't want to set the Governor up in a situation in which he has to violate state law by contacting Homeland Security, that should be clear. Finally, and I think Sen. D'Allesandro expressed this thought so well, this is about involving our federal delegation in thinking about what REAL ID means. I don't want to go through the debate we had and all the work we did last year, but it was exhaustive, and I should say exhausting as well. The point is, that there are real concerns, both about the security issues raised by putting everybody's private information into a computer system which is hackable around the world, and, more importantly, that there are huge financial implications.

We talked in here for five or ten minutes about the impact of 28-A on our state government deliberations. Many people who have done the numbers think that federal REAL ID constitutes a huge unfunded mandate by the federal government on the states. You'll remember that last year we heard the National Governor's Report suggested that this was as much as an \$11 billion mandate imposed by the Congress on the states. We still don't know, because we don't have a financial statement of what the new regulations that have just come out would cost the State of New Hampshire in order to ensure compliance. We don't have those numbers. And as we've heard every day for the last couple of months, we have no money. This is simply a way of saying it's time to get our federal delegation thinking about the consequence of REAL ID on the little State of New Hampshire and its straining budget. I think we ought to give them the privilege of notice, through the Governor's Office, that we need their assistance in getting this extension. That's my point for putting it in. Thank you, Madam President.

(The Chair recognized Sen. Barnes for a question of Sen. Burling.)

SENATOR BARNES: Thank you, Madam President. Sen. Burling, how are we going to get the federal delegation to act on this for the timeframe that looks like it's been set up? We can't get them to, you know, do much of what ...

SENATOR BURLING: Look at what – just in the past few months, you, yourself, Jack, have stood here and said it's time we get the feds to do something.

SENATOR BARNES: No question about it. But how do you propose to get them to do it by the deadline?

SENATOR BURLING: Well, I see that the Governor's Office is represented in the balcony. If we pass this, and it goes through the appropriate channels, if the Governor, I'm sure he will, wants to take action, he will notify them in the fastest possible way. And I think that takes about 13 nanoseconds.

SENATOR BARNES: By golly, that'll be quicker than we've ever heard back from delegations in Washington. I hope you're right.

SENATOR BURLING: We in the New Hampshire Senate are not a body without consequence. We can make ourselves heard.

SENATOR BARNES: Thank you, Senator. I hope you're right.

(The Chair recognized Sen. Gatsas to speak.)

SENATOR GATSAS: Thank you, Madam President. I'm going to read to you from a press release that certainly I'll make available to everybody, but it came out January 11th, 2008. And the question is to Secretary Chertoff. Question: "So as long as one state does not comply with regulations, can this regulation be successful?" Secretary Chertoff: "Oh, sure. Let me tell you how this is going to work. Under the law, we are required, by May of this year, to have states come into compliance with REAL ID, or else to decline to accept state's driver's license for getting onto airplanes or getting into federal buildings. But the law does allow us to waive what this – with respect to this, to any state coming into compliance with REAL ID. And so if we are creating a path for states to get waivers, as they begin the process of implementing – and begin the process, then we have a series of milestones to make sure we move forward on a disciplined way. Now, if a particular ..." – and I'm going to skip a paragraph, it says – I won't skip it – "About 40 percent of the people in this country already live in states which have begun the process of moving toward REAL ID, and I think more states are going to be joining as soon as we get these regulations out and people have an opportunity to analyze them.

And I say that because we've had a lot of discussion and, frankly, major states on these issues – with major states on these issues. Now, if a particular state were to say no, we opt out, we're not going to participate at all, then the law is very clear. After May of this year, that state's driver's license will no longer be acceptable as a form of federal identification for getting on an airplane or getting into a federal building. The consequence is that it's going to be, frankly, more inconvenience for residents of that state. But that's what the law requires, and I'm going to obey the law." It's very clear. So we can ask the Governor, we can request the Governor. And never would I ever demand the Governor to do anything. And for the federal delegation to be wove in, I remember when I stood on this floor awhile ago and said the federal delegation brought \$3 million for ID, for REAL ID, nobody really cared. But now all of a sudden it's about bringing in the federal delegation; two who never voted on REAL ID, one who was opposed to REAL ID, and one who brought the money. I really wonder what the partisan issue is here. Thank you, Madam President.

(The Chair recognized Sen. Letourneau for a question of Sen. Gatsas.)

SENATOR LETOURNEAU: Thank you, Sen. Gatsas. Do you know if there's any federal legislation that's being proposed to water-down the REAL ID Act at this time?

SENATOR GATSAS: Senator, this is the press release that I read you from that came out January 11. I assume it was probably sent to people that were on Homeland Security in the State of New Hampshire. I have to believe it was. I would hope that those people had been keeping abreast with this discussion, and keeping the Governor in the loop. But I would have thought that, except nothing has moved forwarded, as I've read to you from the e-mail.

SENATOR LETOURNEAU: Thank you.

(The Chair recognized Sen. DeVries for a question of Sen. Burling.)

SENATOR DEVRIES: Sen. Burling, thank you for taking my question. Would you believe that since this issue became apparent to me, I have been in conversation with the Director of the Manchester Regional Airport, and would you believe that even an hour ago, when I last spoke with him, he indicated to me that the rules that were issued in January, that Sen. Gatsas is referring to, did have some ambiguity within them; that there were statements that indicated, as the Senator is indicating, that you may not be able to board a state – an airplane, followed, later in the same rules with a statement that indicated it may just require further checking of the individual, calling them a “selectee,” to make sure that they are safe to board a plane. Would you believe that the federal government might have ambiguity in their rules?

SENATOR LETOURNEAU: I guess I would.

(The Chair recognized Sen. Odell for a question of Sen. Burling.)

SENATOR ODELL: Thank you, Senator, my friend. I’m just pointing out possibly a drafting error, a technical error.

SENATOR BURLING: I’m always interested in those.

SENATOR ODELL: In the amendment that Sen. Gatsas brought forward, I join you in that it should be a request and not a demand of the Governor to act. I do appreciate the branches of government. But in the request to the federal delegation, the Governor or designee “shall request the assistance of the New Hampshire federal delegation,” using the same words that were in Sen. Gatsas’ amendment. Is that the way it’s supposed to be?

SENATOR BURLING: I chose to do it that way ‘cause I couldn’t otherwise think of how to put it in a bill form, as opposed to a resolution form. This is one of the hazards of trying to do this work on the fly. Yeah, I ...

SENATOR ODELL: My other question would be, if that being consistent, then would it be fair to just simply “request” the Governor to take – let him take the initiative, decide how he deals with his Congressional delegation. After all, he is the Chief Executive of the State of New Hampshire, I think he can determine best how he should work with our delegation.

SENATOR BURLING: I would be fine with that, Senator. In fact, if this said “may request,” that would be fine, too.

SENATOR ODELL: That would be great.

SENATOR BURLING: My purpose is to call the attention of everyone to this.

(The Chair recognized Sen. Reynolds for a question of Sen. Burling.)

SENATOR REYNOLDS: Sen. Burling, I have had an opportunity of looking at some explanation of these regulations in an NCSL publication. And is it your understanding that we can make a request of an extension as long as it’s done before May 11th, and that extension would be valid through December 31, 2009; is that your understanding?

SENATOR BURLING: That is my understanding from this article, which, as you point out, you got it correctly, is an NCSL publication on point.

SENATOR REYNOLDS: Thank you.

(The Chair recognized Sen. Burling to speak.)

SENATOR BURLING: If I may, Madam President. I do think, as I watch the faces of my colleagues, when Sen. Gatsas was reading the press release, I felt some of the hairs on the back of my neck going up, and I think some of you felt the same. I don't want to reconstitute the argument about REAL ID, but in that press release there is a challenge to the liberty of every citizen of the State of New Hampshire, and we ought to attend to that challenge. This is not the federal government saying to us: We are concerned about the issues that you raised up there in little New Hampshire. This is the State of – the United States, telling us what we're going to do, and what the consequences are going to be, if we don't toe the line. And what they're saying is that sometime in Fort Worth, Texas, in June, "Granny" is going to get patted down 'cause her driver's license doesn't comply with federal regulations that have just barely been issued, that are indecipherable, in pursuit of a federal law that was tacked onto the back of the 2005 security law, and never had a hearing. I think we're all better than that. And I think we have the courage to say we're going to do this right, we're going to commend to the chief executive the task – thank you, Sen. Odell, helping me get this right of "requesting" the extension. But then I think we ought to be prepared to stick to our collective guns and stand up for the rights of the people of New Hampshire.

Recess/Out of Recess.

The question is on the adoption of Floor Amendment 0771s on SB 434.

(The Chair recognized Sen. Burling to speak.)

SENATOR BURLING: Thank you, Madam President. Madam President, I have submitted an amendment which I would like to withdraw, but in all the fury and sound, I've lost my copy so I don't know what the number of the first amendment is.

PRESIDENT LARSEN: The floor amendment previously offered was 771. 0771. You wish to withdraw 0771s?

SENATOR BURLING: I do. Thank you, Madam President. It was said so eloquently, that's exactly what I want.

Sen. Burling withdrew Floor Amendment 0771s.

Sen. Burling offered a further floor amendment.

Sen. Burling, Dist. 5
Sen. Reynolds, Dist. 2
Sen. Sgambati, Dist. 4
Sen. Cilley, Dist. 6
Sen. Janeway, Dist. 7
Sen. Kelly, Dist. 10
Sen. Gottesman, Dist. 12
Sen. Foster, Dist. 13
Sen. Larsen, Dist. 15
Sen. DeVries, Dist. 18
Sen. D'Allesandro, Dist. 20
Sen. Estabrook, Dist. 21
Sen. Hassan, Dist. 23
Sen. Fuller Clark, Dist. 24
Sen. Kenney, Dist. 3

Sen. Odell, Dist. 8
Sen. Roberge, Dist. 9
Sen. Bragdon, Dist. 11
Sen. Clegg, Dist. 14
Sen. Gatsas, Dist. 16
Sen. Barnes, Dist. 17
Sen. Letourneau, Dist. 19
Sen. Downing, Dist. 22
February 21, 2008
2008-0774s
09/01

Floor Amendment to SB 434

Amend the title of the bill by replacing it with the following:

AN ACT relative to providers of electronic communication services and an extension for compliance with the REAL ID Act of 2005.

Amend the bill by replacing all after section 1 with the following:

2 REAL ID; Extension. The governor, or designee, is requested to apply for an extension from the federal government of the deadline for compliance with the REAL ID Act of 2005. Such a request shall not constitute "participation" in REAL ID in violation of state law. The governor, or designee, may request the assistance of the New Hampshire federal delegation in securing the necessary extension.

3 Effective Date.

I. Section 2 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect 60 days after its passage.

2008-0771s

AMENDED ANALYSIS

This bill

I. Deletes references to communications common carriers and adds references to providers of electronic communications service and remote computing services.

II. Requests the governor to apply for an extension from the federal government of the deadline for compliance with the REAL ID Act of 2005.

SENATOR BURLING: And if I may be recognized, I'll move the substitute.

PRESIDENT LARSEN: The bill is on second reading and open for further amendment, you may offer an additional, another floor amendment.

SENATOR BURLING: I move the adoption of 0774s, and I extend my gratitude to my dear friend, Sen. Odell.

PRESIDENT LARSEN: Floor Amendment 0774s has been proposed. Would you like to speak to that motion [sic].

SENATOR BURLING: Thank you, Madam President. Let me withdraw my designation of Sen. Odell as my "dear friend." (Laughter) Apparently the Senate isn't willing to let him have that. This bill, floor amendment, in its current form, speaks of requesting the Governor. That's on line eight. It talks about that the request shall not constitute "participation" on line ten. And it does as Sen. Odell suggested, use the word "may" request the assistance of the federal – New Hampshire federal delegation. With that, I will offer it, and hope you'll pass it.

The question is on the adoption of Floor Amendment 0774s.

(The Chair recognized Sen. Gatsas to speak.)

PARLIAMENTARY INQUIRY

SENATOR GATSAS: Parliamentary question. This does not eliminate the substantial part of Senate Bill 434 as we had voted on, or that was before us, before it was amended.

PRESIDENT LARSEN: It amends it after section 1.

SENATOR GATSAS: Okay.

PRESIDENT LARSEN: Did that answer your question, Sen. Gatsas?

SENATOR GATSAS: I apologize, Madam President. I didn't hear the answer.

PRESIDENT LARSEN: The amendment indicates that the bill is replaced after – is replacing all after section 1. So section 1 of Senate Bill 434 is retained.

SENATOR GATSAS: Okay. Thank you.

PRESIDENT LARSEN: Everything thereafter is replaced.

SENATOR GATSAS: Thank you.

SENATOR BURLING: Madam President, parliamentary inquiry. I believe that it is important to realize it's section Arabic 1. And section Arabic 1 is the entirety of the bill, as it was introduced. That's all I have. If anybody knows otherwise ...

The question is on the adoption of Floor Amendment 0774s.

A roll call was requested by Sen. Barnes, seconded by Sen. DeVries.

The following Senators voted Yes: Gallus, Reynolds, Kenney, Sgambati, Burling, Cilley, Janeway, Odell, Roberge, Kelly, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, DeVries, Letourneau, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.

The following Senators voted No: None.

Yeas: 24 - Nays: 0

Floor Amendment 0774s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 434.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

RESOLUTION

Sen. Foster moved that the Senate adjourn from the Early Session, that the business of the Late Session be in order at the present time, that all bills and resolutions ordered to Third Reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

Motion to adjourn adopted.

Adjournment from Early Session.

LATE SESSION**Third Reading and Final Passage**

SB 311-FN, extending the statute of limitations for civil actions based upon a sexual assault case.

SB 322, relative to lists of professional bondsmen.

SB 328, relative to civil forfeitures for certain waste disposal violations.

SB 332-FN, relative to resomation of human remains.

SB 347, establishing a commission to study making changes to the New Hampshire accountancy act.

SB 372, relative to membership of the heating system certification advisory committee.

SB 375-L, allowing veterinarians to inform town and city clerks about dogs that have been euthanized or died during treatment.

SB 403, relative to the commission to study issues relative to ground-water withdrawals.

SB 428, establishing a commission to study the funding of vaccines for children who are not covered by private health insurance.

SB 430, relative to cemeteries and mausoleums.

SB 434, relative to providers of electronic communication services and an extension for compliance with the REAL ID Act of 2005.

SB 509-FN, requiring tobacco cessation therapy under the state Medicaid program.

SB 513, relative to fighting animals.

SCR 9, urging Congress to fund a community-based outpatient clinic for veterans in Keene.

CACR 34, relating to funding of public education. Providing that the general court shall define an adequate education and distribute state funds for public education in a manner that alleviates local disparities.

ANNOUNCEMENTS

SENATOR BARNES (Rule 44): Madam President. All I wanted to do is rise and once again thank you for the letter you've sent out on the POW/MIA that all members have signed. I appreciate that. Thank you.

PRESIDENT LARSEN: Thank you for bringing that to our attention.

SENATOR BURLING (Rule 44): Thank you. These are becoming almost weekly speeches. When I was a student, I loved the lyric of a hymn that said "Time like an ever-rolling stream sweeps all her sons away." Two days ago, it was a wonderful man by the name of Edgar Mears. Ed served with Joe and all of us in the House, Martha in the House. He was a lion of a man and just a marvelous representative of the North Country; couldn't have asked for better. I did speak to his family yesterday and I want to say ... the people of the North Country have suffered such a loss. We will not know the extent of it for years to come. And I would share just this gift that Ed gave me once. We were in Berlin looking around, and I think I was trying to get some people to run for the House or something inappropriate for that. And Ed said, when we had finished our day's work, he said, "I want to show you something." And it was an afternoon like this. And I said, "What are we going to do?" And he said, "I gotta show you something." And he said, "You think Berlin's

about that paper mill over there.” And he drove me to the top of a hill, at the very peak, above the beautiful City of Berlin, and he said, “Now look at that.” And he turned me around, and before was this vision of mountains and a light that you ... can’t imagine. And I will remember him for the rest of my life for just that gift. But also for the gift of his courage, his determination, his warmth, his humor, and his willingness to do almost anything for the working men and women of the State of New Hampshire. Thank you, Madam President.

SENATOR FULLER CLARK (Rule 44): Oh, thank you. I, too, served in the House with Ed Mears and I have to say that whenever I had a question about labor, a question about what were the needs of the working people, and how we should proceed in the Legislature, he was always there to provide advice, an explanation and assistance. And he always did it with great gratitude and openness. And I’ve just, upon learning that he had died yesterday morning, though I haven’t spent much time with Ed since I’ve been in the Senate, I just felt this profound sense of loss for a truly extraordinary individual who gave his life to the people of the community and to the State of New Hampshire through the work that he did in the Legislature. And he will, indeed, be sorely missed by all of us, not just the people in the North Country. Thank you.

SENATOR D’ALLESANDRO: Thank you, Madam President. I just wanted to say that we are going to waive Finance on Senate Bill 302. Waive Finance on 302. And if I just might. I’ve known – I knew Ed Mears, I’ve known Ed Mears for a long time. But when you talk about working men and women, Johnny Gallus knows that most people from Berlin have moved to Manchester. He’s one of the few that stayed up there and stayed with it, one of the two. But ordinary people sometimes occupy these seats, just ordinary people; hard-working guys who maintain a job and come down here and work, and work for the people. And Ed was that kind of guy, always had a good smile for you, a good laugh. And he was just a good guy, a great American. We lose too many of those every day. Thank you.

(The Chair recognized Sen. Barnes for a question of Sen. D’Allesandro.)

SENATOR BARNES: Did you just say 302?

SENATOR D’ALLESANDRO: Yes, I did, Sen. Barnes.

SENATOR BARNES: Could you tell us what 302 is.

SENATOR D’ALLESANDRO: Senator, that’s your bill on parental notification.

SENATOR BARNES: My bill on parental notification.

SENATOR D’ALLESANDRO: Yes.

SENATOR BARNES: Thank you very much.

SENATOR D’ALLESANDRO: You’re welcome.

SENATOR GALLUS (Rule 44): Thank you, Madam President. I also rise just to say that Ed Mears was a good friend. He was a very devout family man. He was dedicated to the North Country of New Hampshire. We served together on numerous boards in the city. We served on the city council at different times. Ed, you know, arrived at the State House in the House of Representatives prior to my coming here, and he will sorely be missed by everybody in the North Country, and he will be missed by me as a friend. Thank you.

RESOLUTION

Sen. Foster moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, referring bills to committee, scheduling hearings, sending and receiving messages, and processing enrolled bill reports and amendments.

Motion to recess adopted.

The Senate is in recess to the Call of the Chair.

INTRODUCTION OF SENATE BILL(S)

Sen. Foster offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Senate Clerk, Senate legislation numbered from **SB 539 to SB 541**, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

Resolution adopted.

First and Second Reading and Referral

08-2923

SB 539-FN-LOCAL, relative to the cost of an adequate education and provision of fiscal capacity disparity aid. (Estabrook, Dist 21; Foster, Dist 13; D'Allesandro, Dist 20; Rous, Straf 7; Foose, Merr 1; Reeve, Belk 4: Education)

08-2919

SB 540-FN, relative to a standard wellness plan for small employers. (Sgambati, Dist 4; Foster, Dist 13; Hassan, Dist 23; Estabrook, Dist 21; Reynolds, Dist 2; Odell, Dist 8; Gallus, Dist 1; Barnes, Dist 17; Cilley, Dist 6; Fuller Clark, Dist 24; Kelly, Dist 10; D'Allesandro, Dist 20; Gottesman, Dist 12; Larsen, Dist 15; Janeway, Dist 7; McLeod, Graf 2; Nordgren, Graf 9; Bergin, Hills 6; Pilliod, Belk 5; Butler, Carr 1: Commerce, Labor and Consumer Protection)

08-2913

SB 541, relative to an expedited process for certificate of need review. (DeVries, Dist 18; Sgambati, Dist 4: Health and Human Services)

HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

HB 91-FN, relative to lobbyist registration and statements, repealing the restriction on simultaneous employment and public service, and relative to regulation of volunteer public service.

HB 159, establishing an interbranch criminal and juvenile justice council.

HB 211-FN, requiring that driver's license applicants be informed of and examined on laws relating to blind pedestrians.

HB 291, relative to licensure of fireworks sellers.

HB 295, relative to fuel quality standards and testing requirements for combustion of biomass and biomass fuel.

HB 315, relative to criminal background checks of prospective municipal employees through the division of state police.

HB 330, establishing a task force to study the feasibility of supplying laptop computers to all 7th grade children in the state.

HB 331, relative to time limits on design review.

HB 373, relative to unlawful possession of alcohol by a minor.

HB 385-FN, relative to licensing and insurance fees.

HB 415-FN, establishing a geothermal assessment project.

HB 474, excluding septic and sewage treatment facilities from the tax exemption for water and air pollution control facilities.

HB 537, establishing a task force on homeless teenagers.

HB 563, relative to obtaining birth certificates for stillborn children.

HB 589-FN, relative to the calculation of concurrent and consecutive terms of imprisonment.

HB 678-FN, establishing a committee to study issues related to cochlear implants.

HB 682, relative to guardianship of a minor.

HB 730-FN, increasing the maximum fine for speeding in a highway construction or maintenance zone.

HB 766-FN, making changes to the laws relating to special education.

HB 777-FN-A, relative to agricultural exemptions from alteration of terrain permitting requirements and penalties for site development.

INTRODUCTION OF HOUSE BILL(S)

Sen. Foster offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Senate Clerk, House legislation numbered from **HB 91 to HB 777**, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

Resolution adopted.

First and Second Reading and Referral

HB 91-FN, relative to lobbyist registration and statements, repealing the restriction on simultaneous employment and public service, and relative to regulation of volunteer public service. (Election Law and Internal Affairs)

HB 159, establishing an interbranch criminal and juvenile justice council. (Judiciary)

HB 211-FN, requiring that driver's license applicants be informed of and examined on laws relating to blind pedestrians. (Transportation and Interstate Cooperation)

HB 291, relative to licensure of fireworks sellers. (Executive Departments and Administration)

HB 295, relative to fuel quality standards and testing requirements for combustion of biomass and biomass fuel. (Energy, Environment and Economic Development)

HB 315, relative to criminal background checks of prospective municipal employees through the division of state police. (Public and Municipal Affairs)

HB 330, establishing a task force to study the feasibility of supplying laptop computers to all 7th grade children in the state. (Education)

HB 331, relative to time limits on design review. (Public and Municipal Affairs)

HB 373, relative to unlawful possession of alcohol by a minor. (Judiciary)

HB 385-FN, relative to licensing and insurance fees. (Commerce, Labor and Consumer Protection)

HB 415-FN, establishing a geothermal assessment project. (Energy, Environment and Economic Development)

HB 474, excluding septic and sewage treatment facilities from the tax exemption for water and air pollution control facilities. (Public and Municipal Affairs)

HB 537, establishing a task force on homeless teenagers. (Health and Human Services)

HB 563, relative to obtaining birth certificates for stillborn children. (Executive Departments and Administration)

HB 589-FN, relative to the calculation of concurrent and consecutive terms of imprisonment. (Judiciary)

HB 678-FN, establishing a committee to study issues related to cochlear implants. (Health and Human Services)

HB 682, relative to guardianship of a minor. (Judiciary)

HB 730-FN, increasing the maximum fine for speeding in a highway construction or maintenance zone. (Transportation and Interstate Cooperation)

HB 766-FN, making changes to the laws relating to special education. (Education)

HB 777-FN-A, relative to agricultural exemptions from alteration of terrain permitting requirements and penalties for site development. (Energy, Environment and Economic Development)

HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

HB 185-FN, relative to economic revitalization zone credits.

HB 233-FN-A, specifying compensation for ballot law commissioners.

HB 241, relative to permissible campaign contributions by business organizations and labor unions.

HB 285, relative to voting machines.

HB 310, allowing municipalities to regulate small wind energy systems.

HB 399, relative to the minimum hourly rate of compensation.

HB 461, relative to purchasing alliances.

HB 632-FN, relative to the penalty for death resulting from the trafficking of controlled drugs.

HB 679-FN-L, relative to delivery of special education services.

HB 683, relative to nominations by party committees.

HB 717, allowing municipalities to establish local community services and care planning boards.

HB 759-FN, relative to administration and enforcement of banking laws.

HB 794-FN, establishing a commission to study the feasibility of public funding of state election campaigns.

HB 837, relative to easement interests under the land and community heritage investment program.

HB 901, relative to nondriver's identification cards.

HB 1132, creating an exception to the wiretapping statute for a recording device used in conjunction with a TASER or other similar electroshock device.

HB 1166, relative to rate setting for interpreters for the deaf and hard of hearing.

HB 1168, relative to acceptance of property donated to towns and village districts.

HB 1171, establishing a commission to study air quality issues in public school buildings.

HB 1172-FN, changing the name of the pari-mutuel commission to the racing and charitable gaming commission.

HB 1186, reducing the membership of 2 legislative oversight committees.

HB 1206, relative to park and ride facilities.

HB 1215, relative to the New Hampshire-Vermont interstate waste compact.

HB 1219, relative to exempting fish and game department volunteers from financial disclosure requirements.

HB 1220, establishing a commission to study the taxation of alternative fuel and electric-powered motor vehicles for the purpose of funding improvements to the state's highways and bridges.

HB 1231, repealing the advisory panel on cancer and chronic diseases and the tobacco use advisory committee.

HB 1266, allowing 50 caliber pistols to take game animals in the state.

HB 1277, relative to the definition of farm.

HB 1302-FN, relative to enforcement of gambling laws.

HB 1411, relative to rulemaking under the native plant protection act.

HCR 15, commemorating the commissioning of the USS New Hampshire.

HJR 10, urging congress to allow for the interstate sale of state-inspected meat and poultry.

HJR 11, requesting the United States Department of Agriculture to provide redress for price reporting errors in milk prices.

HJR 12, relative to support for research into colony collapse disorder.

INTRODUCTION OF HOUSE BILL(S)

Sen. Foster offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Senate Clerk, House legislation numbered from **HB 185 to HJR 12**, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

Resolution adopted.

First and Second Reading and Referral

HB 185-FN, relative to economic revitalization zone credits. (Ways and Means)

HB 233-FN-A, specifying compensation for ballot law commissioners. (Election Law and Internal Affairs)

HB 241, relative to permissible campaign contributions by business organizations and labor unions. (Election Law and Internal Affairs)

HB 285, relative to voting machines. (Election Law and Internal Affairs)

HB 310, allowing municipalities to regulate small wind energy systems. (Public and Municipal Affairs)

HB 399, relative to the minimum hourly rate of compensation. (Commerce, Labor and Consumer Protection)

HB 461, relative to purchasing alliances. (Commerce, Labor and Consumer Protection)

HB 632-FN, relative to the penalty for death resulting from the trafficking of controlled drugs. (Judiciary)

HB 679-FN-L, relative to delivery of special education services. (Education)

HB 683, relative to nominations by party committees. (Election Law and Internal Affairs)

HB 717, allowing municipalities to establish local community services and care planning boards. (Public and Municipal Affairs)

HB 759-FN, relative to administration and enforcement of banking laws. (Commerce, Labor and Consumer Protection)

HB 794-FN, establishing a commission to study the feasibility of public funding of state election campaigns. (Election Law and Internal Affairs)

HB 837, relative to easement interests under the land and community heritage investment program. (Wildlife, Fish and Game and Agriculture)

HB 901, relative to nondriver's identification cards. (Transportation and Interstate Cooperation)

HB 1132, creating an exception to the wiretapping statute for a recording device used in conjunction with a TASER or other similar electroshock device. (Judiciary)

HB 1166, relative to rate setting for interpreters for the deaf and hard of hearing. (Executive Departments and Administration)

HB 1168, relative to acceptance of property donated to towns and village districts. (Public and Municipal Affairs)

HB 1171, establishing a commission to study air quality issues in public school buildings. (Education)

HB 1172-FN, changing the name of the pari-mutuel commission to the racing and charitable gaming commission. (Ways and Means)

HB 1186, reducing the membership of 2 legislative oversight committees. (Energy, Environment and Economic Development)

HB 1206, relative to park and ride facilities. (Transportation and Interstate Cooperation)

HB 1215, relative to the New Hampshire-Vermont interstate waste compact. (Energy, Environment and Economic Development)

HB 1219, relative to exempting fish and game department volunteers from financial disclosure requirements. (Election Law and Internal Affairs)

HB 1220, establishing a commission to study the taxation of alternative fuel and electric-powered motor vehicles for the purpose of funding improvements to the state's highways and bridges. (Transportation and Interstate Cooperation)

HB 1231, repealing the advisory panel on cancer and chronic diseases and the tobacco use advisory committee. (Health and Human Services)

HB 1266, allowing 50 caliber pistols to take game animals in the state. (Wildlife, Fish and Game and Agriculture)

HB 1277, relative to the definition of farm. (Wildlife, Fish and Game and Agriculture)

HB 1302-FN, relative to enforcement of gambling laws. (Ways and Means)

HB 1411, relative to rulemaking under the native plant protection act. (Wildlife, Fish and Game and Agriculture)

HCR 15, commemorating the commissioning of the USS New Hampshire. (Election Law and Internal Affairs)

HJR 10, urging congress to allow for the interstate sale of state-inspected meat and poultry. (Wildlife, Fish and Game and Agriculture)

HJR 11, requesting the United States Department of Agriculture to provide redress for price reporting errors in milk prices. (Wildlife, Fish and Game and Agriculture)

HJR 12, relative to support for research into colony collapse disorder. (Wildlife, Fish and Game and Agriculture)

Out of Recess.

LATE SESSION

Sen. Foster moved that the Senate adjourn from the Late Session.

Motion to adjourn adopted.

Adjournment from the Late Session.

March 6, 2008

The Senate reconvened at 1:00 p.m., a quorum being present.

Sen. Odell led the Pledge of Allegiance.

President Larsen offered the following comments:

We don't have a chaplain here today, but we have, a number of us, come from a very nice service, and I wanted to take this moment to mourn the passing of our respected friend and colleague, House Republican Leader Mike Whalley. Anyone who knew him would say Mike always stood tall for the issues he believed in. Finding himself the newly elected Republican Leader this session, instead of the Speaker, Mike noted that the only thing that had changed after this election was his job description. He didn't really have to add that he would continue working hard and stand on principle; we already knew that. Always humble, Mike's dedication as a husband and father, businessman and legislator, resulted in no small change for the people of our state. Mike was a man who followed his dreams. Upon graduating from Bishop Brady High School in Concord, he

enrolled in the Whittemore School at the University of New Hampshire. Not long after his graduation, Mike, along with his brother Steve, took a business plan they'd developed for a class project and founded Hooksett Kawasaki. The successful Hooksett location eventually expanded into several now prominent Lakes Region locations. Mike's business interests reflected his love for motorsports and waterborne recreation; so too did his legislative efforts to protect New Hampshire's pristine environment and unique culture. Except for a brief absence, since 1992, Mike first served the people from Bow and later Alton Bay in New Hampshire's House of Representatives. He was a member of Speaker Donna Sytek's leadership team in the late 1990's and later served as Deputy Speaker under Speaker Gene Chandler. During his time in the State House, Mike earned a reputation as someone loyal to his party but willing to strike a deal. Mike was a serious and determined legislator, but also a man of reason and patience. As one former House colleague said, "Mike never lost his temper. He was forever the optimist. He always believed that if we give it one more shot, we can fix it. If we sit down one more time, we can agree." That's a message for all of us.

Another colleague said Mike was a man whose word could be trusted, a compliment which we all know to be among the highest one can give a fellow lawmaker. While many will likely remember Mike of his usual stoic expression and perfect posture, we will also remember that he knew how to laugh. He once described his tenure as Deputy Speaker, explaining, "If it's good news, the speaker delivers it; if it's bad news, I do." In early January, Mike addressed a full House Session calling the body his "second family." He spoke warmly of the cards he had received from his colleagues while battling his sickness. "They were not partisan," he said, "because friendship goes beyond party lines," he said. And so, too, Mike, does our sorrow. Although Mike was committed to his business and cherished his time in Concord, like many of us, his family came first. He was thrilled by his daughter's marriage this past summer and looking forward to his son's wedding this July. Our thoughts and prayers go to all of those who loved Mike, especially his wife, Purr, and his children, John and Caitlin. Those of us who knew him and worked with Mike during his distinguished service in the State House will continue to mourn his passing and long remember his contributions to New Hampshire. For those wishing to make a donation in Mike's memory, in the Senate ante room there is a basket where, at the request of Mike's family, we will be collecting donations for the Children's Hospital at Dartmouth Foundation. Thank you all. I know each and every one of you has memories that we will cherish of Mike's presence with us in this building. Sen. Burling is excused for the day.

INTRODUCTION OF GUESTS AND PRESENTATIONS

Senate Page: James Conklin, Holderness School (son of Senator Reynolds).

Senate Page: Alyson Higgins, Salem High School.

New Staff Members: Danielle Barker and Shelia Mitchell, Senate Secretaries.

COMMITTEE REPORTS

SB 312-FN, relative to insurance coverage for obesity and morbid obesity. Commerce, Labor and Consumer Protection Committee. Ought to Pass with Amendment, Vote 5-1. Senator Cilley for the committee.

Sen. Clegg, Dist. 14
February 19, 2008
2008-0676s
01/09

Amendment to SB 312-FN

Amend the bill by replacing sections 1 and 2 with the following:

1 New Section; Coverage for Obesity and Morbid Obesity; Individual. Amend RSA 415 by inserting after section 6-n the following new section:

415:6-o Coverage for Obesity and Morbid Obesity; Individual. Each insurer that issues or renews any individual policy, plan, or contract of accident or health insurance providing benefits for medical or hospital expenses, shall provide to certificate holders of such insurance, who are residents of this state, coverage for the diseases and ailments caused by obesity and morbid obesity and treatment for such, including bariatric surgery, when the prescribing physician has issued a written order stating that treatment is medically necessary and in accordance with the patient qualifications and treatment standards set forth by the American Society for Metabolic and Bariatric Surgery or the American College of Surgeons. Such treatment standards may include, but not be limited to, pre-operative psychological screening and counseling, behavior modification, weight loss, exercise regimens, nutritional counseling, and post-operative follow-up, overview, and counseling of dietary, exercise, and lifestyle changes. The covered insured shall be at least 18 years of age. The benefits included in this section shall be subject to the terms and conditions of the policy and shall be no less extensive than coverage provided for similar conditions or illnesses.

2 New Section; Coverage for Obesity and Morbid Obesity; Group. Amend RSA 415 by inserting after section 18-s the following new section:

415:18-t Coverage for Obesity and Morbid Obesity; Group. Each insurer that issues or renews any policy of group or blanket accident or health insurance providing benefits for medical or hospital expenses, shall provide to each group, or to the portion of each group comprised of certificate holders of such insurance who are residents of this state, coverage for the diseases and ailments caused by obesity and morbid obesity and treatment for such, including bariatric surgery, when the prescribing physician has issued a written order stating that treatment is medically necessary and in accordance with the patient qualifications and treatment standards set forth by the American Society for Metabolic and Bariatric Surgery or the American College of Surgeons. Such treatment standards may include, but not be limited to, pre-operative psychological screening and counseling, behavior modification, weight loss, exercise regimens, nutritional counseling, and post-operative follow-up, overview, and counseling of dietary, exercise, and lifestyle changes. The covered insured shall be at least 18 years of age. The benefits included in this section shall be subject to the terms and conditions of the policy and shall be no less extensive than coverage provided for similar conditions or illnesses.

SENATOR CILLEY: Thank you, Madam President. I move Senate Bill 312-FN ought to pass with amendment. This bill requires insurance coverage for the diseases and ailments caused by obesity and morbid obesity, and treatment for such, including bariatric surgery when determined to be medically necessary by a physician. The Committee heard testimony that obesity is a life-threatening disease which afflicts 21 percent of our state's population. Moreover, obesity can cause serious secondary illnesses

such as diabetes, female infertility, and certain types of cancers. The Committee heard moving testimony from people who experienced dramatic improvements to their health conditions after receiving bariatric surgery. Committee members were also informed that the American Heart Association and the *New England Journal of Medicine* have acknowledged that bariatric surgery improves quality of life. The bill was amended to address insurers' concerns relative to the impact on their current requirements for weight loss programs. The members of the Commerce, Labor and Consumer Protection Committee asks for your support in ought to pass in Senate Bill 312-FN. Thank you.

The question is on the adoption of Committee Amendment 0676s. Committee Amendment 0676s adopted.

(The Chair recognized Sen. Clegg to speak.)

SENATOR CLEGG: Thank you, Madam President. I'd like to thank the Committee for the work it did. This bill, as you know, is very near and dear to me; I'm one of the people who has seen the benefits of bariatric surgery. And while there are many folks out there who say, is this or is this not a mandate, let me tell you it's not. We're asking that we no longer allow them to withdraw, as a treatment for obesity-related diseases, bariatric surgery as an option. Now, the amendment, as you can see, states that we need to use certain criteria which comes from the bariatric surgeons themselves; it's a six-month process to make sure that only those who are truly qualified get the system. But we have to remember that the cost of treating diabetes is approximately 12 to 15 thousand dollars a year. Ninety to 92 percent of those folks who get bariatric surgery who are diabetics, within 30 days no longer need to be treated as diabetics because they no longer have a diabetic problem. We also have sleep apnea and a number of other conditions. This is just one more way for the State of New Hampshire to make sure that we in New Hampshire continue to be the healthiest population in the United States. So I thank my colleagues on the Committee, I thank them very much for the swiftness in which they acted on this problem which helps all of the citizens of the State of New Hampshire. Thank you.

(The Chair recognized Sen. Hassan to speak.)

SENATOR HASSAN: Thank you, Madam Chair. I rise in support of the bill. And I just wanted to note, while my colleague has indicated that he doesn't believe that this is an insurance mandate, some of our friends in the fourth estate, and I've been reading some of the coverage, and I just wanted to say to my colleague from Hudson that for those of us who have been accused in the past of supporting "nanny state" legislation, welcome to the club. (Laughter)

The question is on the adoption of Ought to Pass as Amended on SB 312-FN.

Motion of Ought to Pass as Amended adopted, bill ordered to the Committee on Finance (Rule 26).

Senators DeVries and Gatsas are in opposition to SB 312-FN.

SB 301-FN, requiring insurers to cover prescriptions filled near the patient's residence. Commerce, Labor and Consumer Protection Committee. Ought to Pass with Amendment, Vote 5-1. Senator Cilley for the committee.

Sen. Clegg, Dist. 14
February 19, 2008
2008-0684s
01/04

Amendment to SB 301-FN

Amend the title of the bill by replacing it with the following:

AN ACT requiring insurers to cover prescriptions for durable medical equipment filled near the patient's residence.

Amend the bill by replacing sections 1 and 2 with the following:

1 New Section; Coverage for Prescriptions for Durable Medical Equipment Filled Near Patient's Residence; Individual. Amend RSA 415 by inserting after section 6-n the following new section:

415:6-o Coverage for Prescriptions for Durable Medical Equipment Filled Near Patient's Residence; Individual. Each insurer that issues or renews any individual policy, plan, or contract of accident or health insurance providing benefits for medical or hospital expenses, shall provide to certificate holders of such insurance, who are residents of this state, coverage for prescriptions for durable medical equipment filled within 10 miles of the patient's residence; provided that such provider shall accept the amount the insurer compensates its other providers for such coverage. The benefits included in this section shall not be subject to any greater deductible than any other benefits provided by the insurer. The coinsurance required by the certificate holder shall not exceed the amount allowed under the contract for the reasonable and customary charge for the services provided. This section shall not be subject to the provisions of RSA 400-A:39-a.

2 New Section; Coverage for Prescriptions for Durable Medical Equipment Filled Near Patient's Residence; Group. Amend RSA 415 by inserting after section 18-s the following new section:

415:18-t Coverage for Prescriptions for Durable Medical Equipment Filled Near Patient's Residence; Group. Each insurer that issues or renews any policy of group or blanket accident or health insurance providing benefits for medical or hospital expenses, shall provide to each group, or to the portion of each group comprised of certificate holders of such insurance who are residents of this state, coverage for prescriptions for durable medical equipment filled within 10 miles of the patient's residence; provided that such provider shall accept the amount the insurer compensates its other providers for such coverage. The benefits included in this section shall not be subject to any greater deductible than any other benefits provided by the insurer. The coinsurance required by the certificate holder shall not exceed the amount allowed under the contract for the reasonable and customary charge for the services provided. This section shall not be subject to the provisions of RSA 400-A:39-a.

2008-0684s

AMENDED ANALYSIS

This bill requires insurers to cover prescriptions for durable medical equipment filled near the patient's residence.

SENATOR CILLEY: Thank you, Madam President. I move Senate Bill 301-FN ought to pass with amendment. This bill requires insurers to fill prescribed durable medical devices near the patient's residence. The prime sponsor testified about a situation involving his insurance provider and his attempt to purchase a physician-prescribed durable medical device. He believes his personal experience represents a direct violation of an insurance rule by his provider which requires customers to be able to fill

prescriptions no further than 15 miles or a 45-minute drive from their home. The Committee heard testimony from members of the health insurance community who agreed that this type of situation is unacceptable and should be resolved. The bill was amended to address insurers' concerns regarding the phrase "any willing provider," and to remove prescription drugs from the purview of this legislation. The members of the Commerce, Labor and Consumer Protection Committee asks for your support in ought to pass on Senate Bill 301-FN as amended. Thank you.

The question is on the adoption of Committee Amendment 0684s. Committee Amendment 0684s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 301-FN.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 494-FN, relative to compulsory coverage requirements under workers' compensation. Commerce, Labor and Consumer Protection Committee. Inexpedient to Legislate, Vote 4-2. Senator DeVries for the committee.

SENATOR DEVRIES: Thank you, Madam President. I move Senate Bill 494-FN inexpedient to legislate. This bill clarifies an exclusion from workers' compensation for certain persons when working on state construction projects. The Committee has concerns for the welfare of workers actively engaged in labor on state construction projects, and does not feel that an exclusion from worker's compensation coverage serves them well. The members of Commerce, Labor and Consumer Protection Committee asks for your support for inexpedient to legislate on Senate Bill 494. Thank you.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on SB 494-FN.

A roll call was requested by Sen. Gatsas, seconded by Sen. Foster.

The following Senators voted Yes: Reynolds, Sgambati, Cilley, Janeway, Kelly, Gottesman, Foster, Larsen, DeVries, D'Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Kenney, Odell, Roberge, Bragdon, Clegg, Gatsas, Barnes, Letourneau, Downing.

Yeas: 13 - Nays: 10

Motion of Inexpedient to Legislate adopted.

SB 501-FN, relative to a workers' compensation exclusion. Commerce, Labor and Consumer Protection Committee. Ought to Pass with Amendment, Vote 5-0. Senator Roberge for the committee.

**Commerce, Labor and Consumer Protection
March 4, 2008
2008-0828s
01/10**

Amendment to SB 501-FN

Amend the title of the bill by replacing it with the following:

AN ACT relative to workers' compensation on certain state projects.

Amend the bill by replacing all after the enacting clause with the following:

1 State Transportation Projects; Workers' Compensation. Amend RSA 228:4-b, I-III to read as follows:

I. Prior to any work being done by an individual contractor on any state transportation project carried out under this subdivision, such contractor, including all subcontractors and independent contractors, working on a highway, bridge, or other construction, reconstruction, alteration, or maintenance project, excluding routine maintenance operations conducted utilizing the contract rental agreement process, ~~[funded]~~ **and excluding deliveries to a project, administered** by the department shall provide to the commissioner of transportation:

(a) A certificate of insurance of his or her current workers' compensation coverage in New Hampshire for the classification of work to be completed on the project;

(b) A sworn statement that this coverage shall remain in effect for the duration of his or her anticipated work on the project;

(c) A completed work certificate, provided pursuant to RSA 281-A:4-b, that shall include the total number of employees anticipated to be employed by such contractor, subcontractor, or independent contractor on the project during the contract period, delineated by the National Council on Compensation Insurance (NCCI) classification code applicable to the scope of work to be performed;

(d) A copy of the contractor's compliance with a current written safety program, if applicable, as filed with the commissioner of labor under RSA 281-A:64, II and proof of an existing joint loss management committee as required under RSA 281-A:64, III, if applicable; and

(e) ~~[Any other information the commissioner of transportation deems necessary]~~ **The department may develop procedures to obtain the requirements in this section on an annual basis or by a prequalification procedure rather than on a project-by-project basis.**

II. If any highway, bridge, or other construction contractor, subcontractor, or independent contractor who might otherwise claim an exclusion under RSA 281-A:18-a is directly performing the work on a project covered under this section, such contractor, subcontractor, or independent contractor shall comply with the provisions of this section.

III. The commissioner of labor may assess any contractor, subcontractor, or independent contractor who falsifies information or fails to comply with this section a civil penalty of up to \$2,500 and in addition, such an employer shall be assessed a civil penalty of up to \$100 per employee per day of noncompliance. Notwithstanding any other provision of law to the contrary, any person with control or responsibility over the decisions to disburse funds and salaries and who knowingly falsified information or **knowingly** failed to comply with this section shall be held personally liable for the payment of penalties under this section and such contractor, subcontractor, or independent contractor shall not be allowed to bid or work on state projects for up to 5 years. The state shall be entitled to recover from the violator all costs and fees directly associated with uncovering falsified information supplied under this section.

2 Major Projects; Workers' Compensation. Amend RSA 21-I:80, VI(a) (5) to read as follows:

(5) ~~[Any other information the commissioner of administrative services deems necessary]~~ **The department may develop procedures to obtain the requirements in this section on an annual basis or by a prequalification procedure rather than on a project-by-project basis.**

3 Major Projects; Workers' Compensation. Amend RSA 21-I:80, VI(c) to read as follows:

(c) The commissioner of labor may assess any contractor, subcontractor, or independent contractor who falsifies information or fails to comply with this section a civil penalty of up to \$2,500 and in addition, such an employer shall be assessed a civil penalty of up to \$100 per employee per day of noncompliance. Notwithstanding any other provision of law to the contrary, any person with control or responsibility over the decisions to disburse funds and salaries and who knowingly falsified information or *knowingly* failed to comply with this section shall be held personally liable for the payment of penalties under this section and such contractor, subcontractor, or independent contractor shall not be allowed to bid or work on state projects for up to 5 years. The state shall be entitled to recover from the violator all costs and fees directly associated with uncovering falsified information supplied under this section.

4 Effective Date. This act shall take effect upon its passage.

2008-0828s

AMENDED ANALYSIS

This bill clarifies certain workers' compensation procedures relating to state projects.

SENATOR ROBERGE: Thank you, Madam President. I move Senate Bill 501-FN ought to pass as amended. This bill, in its original form, was one of several that was submitted to clarify the law regarding the exclusion of certain officers of a corporation or a limited liability company from securing workers' compensation. It also added a penalty for fraudulently representing that a person is an executive officer of such a corporation or company for the purposes of avoiding workers' compensation insurance. The Committee believes that the passage of House Bill 692 in January alleviated much of the need for this bill. However, the Committee did hear from representatives of the business community that there still were other concerns about the language in House Bill 692 and its impact on truck drivers making deliveries to state construction sites. The committee amendment therefore clarifies that those making deliveries to construction sites be treated like those businesses with the Department of Transportation contract rental agreements; for example, snowplowers and grass mowers. In addition, the committee amendment makes it clear that the Department of Transportation may streamline the certification process it currently requires, and it also clarifies that the personal liability for failure to comply with workers' compensation laws will apply only if failure to comply is knowingly. And, finally, the committee amendment also addresses the Department of Labor's recommendation that the bill take effect immediately upon passage. The members of the Commerce, Labor and Consumer Protection Committee asks for your support. Thank you.

(The Chair recognized Sen. Clegg for a question of Sen. Roberge who deferred to Chairman of Committee, Sen. Gottesman who had not yet spoken to the bill.)

(The Chair recognized Sen. Gottesman to speak.)

SENATOR GOTTESMAN: Thank you, Madam President. I am speaking on this bill. (Laughter)

(The Chair recognized Sen. Clegg to ask a question of Sen. Gottesman.)

SENATOR CLEGG: Sen. Gottesman, I heard the blurb on the bill, and I'm looking and it says, "and excluding deliveries to a project." And what I want to make sure is that if the same trucks are working all day delivering asphalt, for instance, to a job to keep the paver going, if they are included in the exemption as delivery truck.

SENATOR GOTTESMAN: Yes, they are.

SENATOR CLEGG: Thank you very much.

The question is on the adoption of Committee Amendment 0828s.

Committee Amendment 0828s adopted.

Sen. D'Allesandro offered a floor amendment.

Sen. D'Allesandro, Dist. 20

March 6, 2008

2008-0886s

05/10

Floor Amendment to SB 501-FN

Amend the title of the bill by replacing it with the following:

AN ACT relative to a workers' compensation exclusion and penalty collection powers of the department of labor.

Amend the bill by inserting after section 1 the following and renumbering the original section 2 to read as 3:

2 New Section; Department of Labor; Penalty Collection Powers. Amend RSA 281-A by inserting after section 57 the following new section:

281-A:57-a Penalty Collection Powers.

I. Notwithstanding the provisions of any other law, with respect to the collection of any fees, penalties, or interest administered by the department, the department shall cause a certified copy of the notice and demand for payment of such fees, penalties, or interest to be filed in accordance with RSA 454-B:2 and such filing and service of the notice and demand shall constitute a lien upon the real estate, personal estate, property interest, right or credit to which the notice and demand relates, or which may be subsequently discovered.

II. If the party liable for such fees, penalties, or interest neither resides in nor owns property in this state, then the notice and demand in paragraph I of this section shall be filed with the secretary of state and shall constitute a lien in the manner as provided in paragraph I.

III. Any lien filed pursuant to this section shall continue and shall be valid and binding until the liability for the sum, with interest, costs and attorney's fees is satisfied or 6 years from the date such lien is filed, whichever is earlier.

IV. In the event the liability, interest, costs, and attorney's fees are not satisfied before the end of the original term of the lien, any lien filed pursuant to this section may be renewed for the same term as the original term of the lien by refiled according to the procedures set forth in paragraphs I-III.

V. A bankruptcy filing shall not affect the validity of any lien properly filed or renewed in accordance with this section.

VI. Upon neglect or refusal of any person or corporation to pay the fees, penalties, or interest assessed upon them, the department may distrain the personal estate, property interest, right or credit of such person or corporation.

2008-0886s**AMENDED ANALYSIS**

This bill:

I. Clarifies the law regarding the exclusion of certain officers of a corporation or limited liability company from securing workers' compensation.

II. Adds a penalty for fraudulently representing that a person is an executive officer of such corporation or company for the purposes of avoiding workers' compensation insurance.

III. Provides the department of labor with the same penalty collection powers as the department of revenue administration.

SENATOR D'ALLESANDRO: Thank you, Madam President. I'd like to offer Amendment 0886s, and ask that it be passed out. May I speak while it's being passed out?

PRESIDENT LARSEN: You may. Floor Amendment 0886 has been proposed, you may discuss it as it's being distributed.

SENATOR D'ALLESANDRO: Thank you, Madam President. This amendment gives the Department of Labor the same powers for penalty collection as the powers now vested in the Department of Revenue Administration. In discussions with the Department of Labor, it is our conclusion that we can bring in another \$300,000 in revenue if these powers are granted to the Department of Labor. They currently have the power to fine, but they don't have the power that DRA has to collect these fines. This will give them the power to collect these fines. There won't be any new employees needed or anything of that nature, and we could see an additional \$300,000 in revenue. Thank you, Madam President.

(The Chair recognized Sen. Gatsas for a question of Sen. D'Allesandro.)

SENATOR GATSAS: Senator, does this include anything other than real estate, does it include equipment in a restaurant, assuming that maybe they don't own the real estate? Chattel mortgages, anything like that?

SENATOR D'ALLESANDRO: Let me look quickly and see if that's contained in here. (Pause) I think if we look at Roman I ...

SENATOR GATSAS: I got there, it does. Thank you.

SENATOR D'ALLESANDRO: Thank you, Sen. Gatsas.

The question is on the adoption of Floor Amendment 0886s.

Floor Amendment 0886s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 501-FN.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 502-FN, relative to unemployment compensation. Commerce, Labor and Consumer Protection Committee. Ought to Pass with Amendment, Vote 5-0. Senator Reynolds for the committee.

Commerce, Labor and Consumer Protection

March 4, 2008

2008-0834s

08/09

Amendment to SB 502-FN

Amend RSA 282-A:31, I(d) as inserted by section 2 of the bill by replacing it with the following:

(d) He or she is available for and seeking permanent, full-time or part-time work for which he or she is qualified ***provided that, if availability is limited to part-time work, the claim for unemployment benefits is based on wages earned in part-time work.***

Amend the bill by inserting after section 5 the following and renumbering the original section 6 to read as 7:

6 Minimum Rate. Amend RSA 282-A:82 to read as follows:

282-A:82 Minimum Rate.

I. The commissioner shall compute the ~~[amount to be subtracted from every employer's contribution rate]~~ ***discount rate*** for the 4 calendar quarters during a calendar year by determining the available balance in the unemployment compensation fund on September 30 of the preceding calendar year. ~~[The amount to be subtracted from every employer's contribution rate]~~ ***Except as provided in paragraph II of this section the discount rate*** for the 4 calendar quarters during a calendar year shall be as follows:

(a) Whenever the unemployment compensation fund equals or exceeds \$225,000,000 on September 30 of the preceding calendar year, the ~~[amount to be subtracted]~~ ***discount rate*** shall be .5 percent.

(b) Whenever the unemployment compensation fund equals or exceeds \$250,000,000 on September 30 of the preceding calendar year, the ~~[amount to be subtracted]~~ ***discount rate*** shall be one percent.

(c) Whenever the unemployment compensation fund equals or exceeds \$275,000,000 on September 30 of the preceding calendar year, the ~~[amount to be subtracted]~~ ***discount rate*** shall be 1.5 percent.

II. The commissioner of the department of employment security shall maintain the discount rate at the rate in place during the preceding 4 calendar quarters when the commissioner with the approval of the governor and council, determines, the maintenance of this discount rate will constitute a significant benefit to the New Hampshire business environment and is consistent with the purposes of this chapter.

III. For the purposes of this section, "discount rate" means the amount to be subtracted from positive balanced employer's contribution rate.

~~[H:]~~ ***IV. The minimum contribution rate under this section shall be not less than .10 percent.***

2008-0834s

AMENDED ANALYSIS

This bill:

I. Defines "part-time work."

II. Defines "full-time work."

III. Allows refusal of acceptance of full-time and part-time work to be considered in unemployment compensation benefit eligibility considerations.

IV. Defines "discount rate".

SENATOR REYNOLDS: Thank you, Madam President. I move Senate Bill 502-FN ought to pass. This bill allows those seeking part-time work to be considered for unemployment compensation benefits. Part-time work is defined in Senate Bill 502-FN to mean 20 hours or more work per week. Under current law those who tell the Department of Employment Security that they cannot accept full-time employment are not eligible for benefits. The Committee heard testimony from the Department of Employment Security, New Hampshire Legal Assistance, and members

of organized labor that this bill will help alleviate the economic burden on working families, modernize the unemployment system, and reflect the modern labor market which increasingly relies on part-time workers. The committee amendment authorizes the Commissioner of Employment Security, with the approval of the Governor and Council, to continue the current discount rate for unemployment taxes if, in their judgment, doing so will protect the business climate in the state without jeopardizing the trust fund. The members of the Commerce, Labor and Consumer Protection Committee asks for your support for ought to pass as amended on Senate Bill 502-FN. Thank you, Madam President.

**The question is on the adoption of Committee Amendment 0834s.
Committee Amendment 0834s adopted.**

Sen. DeVries offered a floor amendment.

Sen. DeVries, Dist. 18

March 6, 2008

2008-0883s

08/09

Floor Amendment to SB 502-FN

Amend RSA 282-A:82, II as inserted by section 6 of the bill by replacing it with the following:

II. The commissioner of the department of employment security shall maintain the discount rate at the rate in place during the preceding 4 calendar quarters when the commissioner, after consultation with the advisory council on unemployment compensation established under RSA 282-A:128, and with the approval of the governor and council, determines, the maintenance of this discount rate will constitute a significant benefit to the New Hampshire business environment and is consistent with the purposes of this chapter.

SENATOR DEVRIES: Thank you, Madam President. I rise to offer a floor amendment. And I'll explain the floor amendment as that is being distributed. The floor amendment is 2008-0883s. This amendment simply adds the Advisory Council on Unemployment Compensation, on line 4, to the process of review, prior to the submission to the Governor and Council. So if there is going to be a submission of maintaining the ... discount for – a submission for the maintenance of the discount rate, it will add the natural advisory council which would be the Unemployment Compensation Council to the process of review prior to admission [sic] to the Governor and Council. Thank you.

(The Chair recognized Sen. Barnes for a question of Sen. DeVries.)

SENATOR BARNES: Thank you, Madam President. Senator, who are the senators on the advisory council?

SENATOR DEVRIES: That would be me.

SENATOR BARNES: You're the only one?

SENATOR DEVRIES: I believe I am the only Senator placed on the advisory council, though there could be another name, I'd have to defer to others, if somebody has not attended. It's only been myself that has attended the meetings.

SENATOR BARNES: Thank you very much.

(The Chair recognized Sen. Hassan for a question of Sen. DeVries.)

SENATOR HASSAN: Thank you, Senator. I just wanted to confirm my understanding of this floor amendment. The Advisory Council on Unemployment, according to this amendment, must be consulted but does not have approval power, is that correct?

SENATOR DEVRIES: It is strictly an advisory council and it just adds into the process of review. But they will just be consulted prior to submission.

SENATOR HASSAN: Thank you.

The question is on the adoption of Floor Amendment 0883s.

Floor Amendment 0883s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 502-FN.

Motion of Ought to Pass as Amended adopted, bill ordered to Committee on Finance (Rule 26).

Recess/Out of Recess.

SB 376, requiring local fire chiefs to report annually to the state fire marshal on the safety of school buildings. Education Committee. Ought to Pass with Amendment, Vote 6-0. Senator Kelly for the committee.

Sen. Kelly, Dist. 10
February 13, 2008
2008-0571s
04/10

Amendment to SB 376

Amend the title of the bill by replacing it with the following:

AN ACT requiring local fire chiefs to annually inspect all school buildings within his or her jurisdiction and report on the condition of all such school buildings.

Amend RSA 153:14, II(b) as inserted by section 1 of the bill by replacing it with the following:

(b) Each local fire chief shall annually inspect all school buildings within his or her jurisdiction while school is in session and submit a written report to the state fire marshal on the condition of all such school buildings. A copy of the report shall be furnished to the school district superintendent and school board members. The report shall detail any state fire code compliance issues in each school building. The report shall be submitted no later than December 15 each year.

Amend the bill by replacing section 2 with the following:

2 Effective Date. This act shall take effect January 1, 2009.

2008-0571s

AMENDED ANALYSIS

This bill requires local fire chiefs to annually inspect all school buildings within his or her jurisdiction and submit a report to the state fire marshal on the fire safety condition of such school buildings.

SENATOR KELLY: Thank you, Madam President. I move SB 376 as ought to pass with amendment. This bill establishes that each local fire chief make an annual fire inspection of each school in his or her district to ensure the safety of our children while in school. This bill provides for a system of communication by way of submitting the annual fire inspec-

tion report to the state fire marshal, the local superintendent, and the local school board. In doing so, the bill provides yearly, updated, accurate information regarding fire safety compliance. It will provide information to the State, superintendents, and to school boards, to assist them in planning, and will alleviate last-minute building safety crises. This bill simply requires the local fire chief to make annual fire inspections of our schools to ensure the safety of our children while in school. The Education Committee voted 6-0 in favor of the motion, and I ask for your support. Thank you.

**The question is on the adoption of Committee Amendment 0571s.
Committee Amendment 0571s adopted.**

**The question is on the adoption of Ought to Pass as Amended
on SB 376.**

**The motion of Ought to Pass as Amended adopted, bill ordered to Third
Reading.**

SB 530-FN-A-L, relative to kindergarten aid. Education Committee. Ought to Pass with Amendment, Vote 4-1. Senator Estabrook for the committee.

**Senate Education
February 19, 2008
2008-0713s
04/05**

Amendment to SB 530-FN-A-LOCAL

Amend RSA 198:15-r, I and I-a as inserted by section 1 of the bill by replacing them with the following:

I. There is established in the department of education a kindergarten construction program *to provide certain construction and classroom transition grants*. For the period beginning July 1, 1997, and ending June 30, [2008] **2013**, the commissioner of education shall make grants available to eligible districts that currently do not operate a public kindergarten program to cover 75 percent of the actual cost of construction of kindergarten facilities, exclusive of site acquisition and core facilities. *A school district that displaces pupils from an existing classroom space in order to use such space to provide a kindergarten program shall be eligible for a construction grant under this paragraph to cover the costs incurred in constructing or renovating new classroom space for the displaced pupils.* Grants shall also cover the cost of initial furniture, fixtures, and equipment needed to operate a kindergarten program.

I-a. The commissioner of education shall make classroom transition grants available to eligible districts that currently do not operate a public kindergarten program and that begin operation of such a program as of September 2008 or September 2009 to cover 100 percent of the actual cost of leasing and set up of temporary classrooms for a single lease period with a maximum term of 3 years. Classroom transition grants shall also cover the cost of initial furniture, fixtures, and equipment needed to operate a kindergarten program. The provisions of RSA 32:8 and RSA 32:11 shall not apply to costs incurred by a school district under this paragraph.

Amend RSA 198:15-r, V as inserted by section 1 of the bill by replacing it with the following:

V. A district shall not be deemed ineligible from receiving the full amount of a construction or transition grant for which it is otherwise eligible as a result of the district already expending funds for construction or transition costs related to providing a kindergarten program beginning in the 2008 or 2009 school year.

Amend section 2 of the bill by replacing paragraph II with the following:

II. The per pupil amount of the additional education grant provided in this section shall be \$1,200 for the 2008 school year. Once pupils enrolled in an approved kindergarten program have been counted in the average daily membership in residence, school districts shall receive, for each such pupil, an adequate education grant calculated in accordance with RSA 198:41 and RSA 198:42. School districts that receive kindergarten adequacy grants under this section shall not be eligible to receive any other per pupil adequacy grant.

Amend the bill by replacing section 3 with the following:

3 Kindergarten Implementation Plan. A school district that is unable to provide a public kindergarten program effective September 2008, shall notify the commissioner of the department of education on or before April 1, 2008. No later than December 1, 2008, such district shall submit to the commissioner a plan which has been approved by the local school board, and which sets forth the school district's plan for providing a public kindergarten program no later than September 2009. The plan shall include detailed benchmarks and timetables for providing kindergarten classrooms, curriculum, staffing, and equipment as established by the commissioner.

SENATOR ESTABROOK: Thank you, Madam President. I move Senate Bill 530 ought to pass with amendment. This bill implements the recommendations of the Joint Legislative Committee on Costing, whose charge under last Session's HB 927 was to consider transition assistance for communities implementing public kindergarten, in keeping with the definition of an adequate education adopted by the Legislature. This bill extends the kindergarten construction program, allows use of these funds for temporary classrooms, fixtures and furnishings at 100 percent aid. It provides per-pupil funding in keeping with current practice, pending changes to be made under separate legislation on costing. It grants a one-year extension to Fall '09 for districts who can show evidence of progress and a plan for implementation. The benefits of quality early childhood education are well documented. In fact, it has been over 100 years since the first New Hampshire students benefited from the earliest public kindergarten program. It's time for all New Hampshire students to benefit, and SB 530 is a milestone in that history. Thank you, Madam President.

**The question is on the adoption of Committee Amendment 0713s.
Committee Amendment 0713s adopted.**

Sen. Bragdon asserted Rule 42 on SB 530-FN-A-L.

Sen. Gatsas offered a floor amendment.

Sen. Gatsas, Dist. 16

Sen. Clegg, Dist. 14

Sen. Odell, Dist. 8

Sen. Downing, Dist. 22

Sen. Barnes, Dist. 17

Sen. Kenney, Dist. 3

Sen. Roberge, Dist. 9
March 6, 2008
2008-0891s
04/10

Floor Amendment to SB 530-FN-A-LOCAL

Amend RSA 198:15-r, I and I-a as inserted by section 1 of the bill by replacing them with the following:

I. There is established in the department of education a kindergarten construction program ***to provide certain construction and classroom transition grants***. For the period beginning July 1, 1997, and ending June 30, [2008] **2013**, the commissioner of education shall make grants available to eligible districts that currently do not operate a public kindergarten program to cover [75] **100** percent of the actual cost of construction of kindergarten facilities, exclusive of site acquisition and core facilities. ***A school district that displaces pupils from an existing classroom space in order to use such space to provide a kindergarten program shall be eligible for a construction grant under this paragraph to cover the costs incurred in constructing or renovating new classroom space for the displaced pupils.*** Grants shall also cover the cost of initial ***furniture, fixtures, and*** equipment needed to operate a kindergarten program.

I-a. The commissioner of education shall make classroom transition grants available to eligible districts that currently do not operate a public kindergarten program and that begin operation of such a program as of September 2008 or September 2009 to cover 100 percent of the actual cost of leasing, construction, and set up of temporary classrooms for a single lease period with a maximum term of 10 years. Classroom transition grants shall also cover the cost of initial furniture, fixtures, and equipment needed to operate a kindergarten program. The provisions of RSA 32:8 and RSA 32:11 shall not apply to costs incurred by a school district under this paragraph.

Amend RSA 198:15-r, V as inserted by section 1 of the bill by replacing it with the following:

V. A district shall not be deemed ineligible from receiving the full amount of a construction or transition grant for which it is otherwise eligible as a result of the district already expending funds for construction or transition costs related to providing a kindergarten program beginning in the 2008 or 2009 school year.

Amend section 2 of the bill by replacing paragraph II with the following:

II. The per pupil amount of the additional education grant provided in this section shall be \$1,200 for the 2008 school year. Once pupils enrolled in an approved kindergarten program have been counted in the average daily membership in residence, school districts shall receive, for each such pupil, an adequate education grant calculated in accordance with RSA 198:41 and RSA 198:42. School districts that receive kindergarten adequacy grants under this section shall not be eligible to receive any other per pupil adequacy grant.

Amend the bill by replacing section 3 with the following:

3 Kindergarten Implementation Plan. A school district that is unable to provide a public kindergarten program effective September 2008, shall notify the commissioner of the department of education on or before April 1, 2008. No later than December 1, 2008, such district shall submit to the commissioner a plan which has been approved by

the local school board, and which sets forth the school district's plan for providing a public kindergarten program no later than September 2009. The plan shall include detailed benchmarks and timetables for providing kindergarten classrooms, curriculum, staffing, and equipment as established by the commissioner.

2008-0891s

AMENDED ANALYSIS

This bill:

I. Extends the kindergarten construction aid program through June 30, 2013.

II. Authorizes kindergarten classroom transition grants through June 30, 2011 to be used to cover the cost of leasing, construction, and set up of portable classrooms, furniture, fixtures, and equipment for school districts providing a public kindergarten program as of September 2008 or September 2009.

III. Requires that a school district providing a public kindergarten program as of September 2008 or September 2009 shall receive, in that same year, an additional adequate education grant amount based on the number of pupils attending kindergarten in the district as of the beginning of the school year.

IV. Requires certain school districts to submit a kindergarten implementation plan to the commissioner of the department of education detailing the district's plan to provide a public kindergarten program no later than September 2009.

SENATOR GATSAS: Thank you, Madam President. I'd like to have Floor Amendment 0891 passed out, and can I speak to it?

PRESIDENT LARSEN: You may speak to that as it's being distributed.

SENATOR GATSAS: Based on the committee amendment, there are two changes in this that would not infringe on 28-A, and that would be on line 8 of the committee amendment, changing that from 75 percent to a hundred percent. And also, the other change would be, if you go to line 19, it changes it from three years to a maximum term of ten years. There's no question that kindergarten in some of these communities is long overdue, but if we're going to put the mandate on it, then the State of New Hampshire should pay for it, and that's what this amendment does. Thank you, Madam President.

(The Chair recognized Sen. Foster for a question of Sen. Gatsas.)

SENATOR FOSTER: So the primary purpose of this is to eliminate any risk that a community might challenge on a 28-A, a 28-A challenge by only having the 75 percent; is that your intent?

SENATOR GATSAS: That's correct. That is the intent.

SENATOR FOSTER: Thank you.

(The Chair recognized Sen. Estabrook to speak.)

SENATOR ESTABROOK: Thank you, Madam President. I want to address the two issues that are raised in this floor amendment. The first is that it asks us to change the 75 percent parameter of the kindergarten construction program, which is what it has been since its inception, to a hundred percent at this time for these remaining districts. I'll speak to that first. This is an issue that the Committee did hear about and did debate; in fact, we requested information from the Department about various approaches we might take to this part of the question. And there

was quite a bit of difference of opinion about whether communities that had waited until this became something they had to do should be entitled to a greater reimbursement than communities that did it voluntarily in the past. And the Committee was unable, really, to decide what path to take about this; knew the bill was going to Finance, and felt that, given there were several ways we could approach this, it was a debate that should happen there. One of the options that's been put forth by the Department is that we create a new definition for something called a "minimally code-compliant classroom," which would mean that it would be something that would just be without any bells and whistles, and at that the State would pay 100 percent for. I think there are some issues with paying a hundred percent for whatever a district chooses to build without any parameters around what that might be. So my recommendation and I would ask support for the idea of allowing this issue to be further investigated in the Finance Committee.

With regard to extending the lease period from three to ten years, that is something that the Committee debated and made a very conscious policy decision that it should remain at three years. So I oppose extending it to ten years. We do not want to see kindergarten students remain in temporary classrooms for more than three years. And by extending it to ten years we are simply encouraging that to continue. So for both of these reasons, I would urge that we defeat the floor amendment and allow further discussion of these issues in the Finance Committee. Thank you, Madam President.

(The Chair recognized Sen. Gatsas for a question of Sen. Estabrook.)

SENATOR GATSAS: Senator, do you think that those children should be in a portable classroom even for one year?

SENATOR ESTABROOK: That's entirely up to the school board of the districts in which they reside.

(The Chair recognized Sen. Letourneau to speak.)

SENATOR LETOURNEAU: Thank you, Madam President. Madam President, quite frankly, I'm very offended by the comments made by the chairman of the Committee saying that the communities that are involved in not having kindergarten have done so voluntarily. I represent two towns, Derry and Windham, who do not have kindergarten at this time, who have struggled for the past ten years, each of them taking almost five years to build new schools, to get it passed by the taxpayers. The Town of Derry has spent over \$30 million recently, two years ago, to build a new school and add additions to three other schools. The Town of Windham last year, finally after five years, has raised enough money, \$30 million and bonded it out, to build a new high school. Now, with this mandate that's coming down from Concord to do kindergarten, they have to go back to the taxpayers and ask for more money. The reason why they haven't done kindergarten is 'cause they had other priorities in front of them. They've had plans for kindergarten all these years. As a matter of fact, the Town of Derry had already had plans into works and they're about to implement them very shortly. But the point here is that this is an Article 28 issue, and if we're going to demand that these towns do this, then we should pay for it. It's an unfunded mandate if we don't pay for it. And if we do pay for it, you won't have to worry about ten years for trailers, because the towns will take that hundred percent funding and they will build a kindergarten, which is what I think the chairman would like to see. Thank you very much.

(The Chair recognized Sen. Foster to speak.)

SENATOR FOSTER: Very briefly. I want to thank Sen. Gatsas for bringing the amendment forward. As Sen. Estabrook said, we did think and talk about this quite a bit. We didn't come to closure on the issue. I think it's wise, though, for us for today to defer on the decision by voting no on the amendment and have it taken up in the Finance Committee so we can bring in more input from the Department to see whether Mr. Murdough's idea can be put forward. I think it is a wise move for us to do today. Thank you.

The question is on the adoption of the Floor Amendment 0891s.

A roll call was requested by Sen. Gatsas, seconded by Sen. Barnes.

The following Senators voted Yes: Gallus, Kenney, Odell, Roberge, Clegg, Gatsas, Barnes, DeVries, Letourneau, Downing.

The following Senators voted No: Reynolds, Sgambati, Cilley, Janeway, Kelly, Gottesman, Foster, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.

Yeas: 10 - Nays: 12

Floor Amendment 0891s failed.

Sen. Bragdon asserted Rule 42 on SB 530-FN-A-L.

(The Chair recognized Sen. Bragdon to ask a question of Sen. Estabrook.)

SENATOR BRAGDON: Thank you, Madam President. I've been asked a question, and it's actually the second time I've been asked it, and I think for the record it would be good to get the answer on the record. And I'll say, though I took a Rule 42 on the vote, this is a question that came up related to the mechanics of it by some school districts, and knowing a little bit how it works, I think I can best ask the question – for Sen. Estabrook, I'm sorry. On the main bill, line 20 of the first page of the bill, where it inserts the word “any”?

SENATOR ESTABROOK: Mm-mm.

SENATOR BRAGDON: The question's been asked by two school districts, really: If their building project is, let's say, a kindergarten, first and second grade building, they get the 75 percent funding for the – currently, they get the 75 percent funding for the kindergarten piece, and then the rest of the building is still eligible for regular building aid at 30 percent. And some of them are concerned that that word “any” means that they won't get the 30 percent funding on the rest of the building. I don't think that's the intent, and I don't think – and I guess I'd like that on the record that that's not the intent of this.

SENATOR ESTABROOK: Thank you. I hadn't been asked the question myself, but I totally agree with your interpretation, that the kindergarten part of the project would receive one rate and the remainder of the project would still be eligible for the normal rate.

SENATOR BRAGDON: Great. Thank you very much.

The question is on the adoption of Ought to Pass as Amended on SB 530-FN-A-L.

Motion of Ought to Pass as Amended adopted, bill ordered to Committee on Finance (Rule 26).

Sen. Bragdon asserted Rule 42 on SB 530-FN-A-L.

SB 402, relative to large groundwater permitting requirements for wells installed prior to 1998. Energy, Environment and Economic Development Committee. Ought to Pass with Amendment, Vote 4-0. Senator Fuller Clark for the committee.

Sen. Cilley, Dist. 6

February 19, 2008

2008-0689s

06/10

Amendment to SB 402

Amend the bill by replacing all after the enacting clause with the following:

1 Rulemaking. Amend RSA 485-C:4, XII to read as follows:

XII. All new *large* groundwater withdrawals of 57,600 gallons or more in any 24-hour period *from a well or wells at a single property or business sited after July 31, 1998*. Such rules shall include:

(a) Criteria and procedures for requiring persons to identify and address impacts of withdrawals on surface waters, subsurface waters, water-related natural resources, and public, private, residential, and farm wells within the potential impact area of the proposed withdrawal as defined in RSA 485-C:21, V-e.

(b) Requirements relative to conservation management plans which demonstrate the need for the proposed withdrawals, to be submitted by the persons seeking approval for a withdrawal.

(c) Procedures by which the department may deny permission for withdrawals or order the applicant to provide a response policy, as provided by department rules, for provision of alternative water supply at no initial capital cost to persons whose wells are adversely affected by the proposed withdrawal or order reduced withdrawals if hydrogeologic data indicate that water-related resources are being adversely affected by the withdrawals.

XIII. Increased withdrawals of 57,600 gallons or more in any 24-hour period beyond the historic maximum withdrawal volume in any 24-hour period under RSA 488:12 from a well or wells sited at a single property or place of business prior to August 1, 1998, and including withdrawals from wells at a single property or place of business sited after July 31, 1998 that are not subject to the requirements of paragraph XII. Such rules shall include:

(a) Criteria and procedures for requiring persons to identify and address effects of withdrawals on surface waters, subsurface waters, water-related natural resources, and public, private, residential, and farm wells within the potential impact area of the proposed withdrawal as defined in RSA 485-C:21, V-e.

(b) Criteria and procedures for the use of data obtained from existing hydrogeological studies if available, in place of conducting new studies if such data is substantially equivalent to the information required by subparagraph (a).

(c) Requirements relative to conservation management plans which demonstrate the need for the proposed withdrawals, to be submitted by the persons seeking approval for a withdrawal.

(d) Procedures by which the department may deny permission for withdrawals or order the applicant to provide a response policy, as provided by department rules, for provision of alternative water supply at no initial capital cost to persons whose wells are

adversely affected by the proposed withdrawal or order reduced withdrawals if hydrogeologic data indicate that water-related resources are being adversely affected by the withdrawals.

2 Approval for Large Groundwater Withdrawals. Amend the section heading of RSA 485-C:21 to read as follows:

485-C:21 Approval for Large Groundwater Withdrawals *from New Wells and Increased Withdrawals from Existing Wells.*

3 New Paragraph; Approval for Large Groundwater Withdrawals from New Wells and Increased Withdrawals from Existing Wells. Amend RSA 485-C:21 by inserting after paragraph I the following new paragraph:

I-a. Effective January 1, 2008, no person may increase withdrawals by 57,600 gallons in any 24-hour period beyond the historic maximum withdrawal volume in any 24-hour period as established by RSA 488:12 without prior approval of the department from a well or wells at a single property or place of business that were:

(a) Sited prior to August 1, 1998; and

(b) Sited after August 1, 1998 that are not subject to the requirements of paragraph I, above.

4 Approval for Large Groundwater Withdrawals from New Wells and Increased Withdrawals from Existing Wells. Amend RSA 485-C:21, II to read as follows:

II. Applications for approval of water withdrawals of 57,600 gallons or more per day ***subject to paragraph I or I-a*** shall be filed with the department on a form approved by the department. A preliminary report submitted by a public water system pursuant to department rules shall be an application for purposes of this section. Copies of the application and any subsequent materials submitted to the department shall be forwarded by certified mail by the applicant to the governing bodies of each municipality and each supplier of water within the potential impact area of the proposed withdrawal as defined in RSA 485-C:21, V-e. The department shall provide the governing body of each municipality with copies of any mailed correspondence sent to the applicant. The department shall provide the applicant with copies of any mailed correspondence sent to or received from the governing body of a municipality.

5 New Paragraph; Approval for Large Groundwater Withdrawals from New Wells and Increased Withdrawals from Existing Wells. Amend RSA 485-C:21 by inserting after paragraph V-e the following new paragraphs:

V-f. The applicant may not comply with the requirements of RSA 485-C:14-a, RSA 485-C:21, II, III, and IV if it submits only a final application that relies solely on information submitted in accordance with RSA 485-C:4, XIII.

V-g. Copies of the final application submitted pursuant to paragraph V-f and any subsequent materials submitted to the department shall be forwarded by certified mail by the applicant to the governing bodies of each municipality and each supplier of water within the potential impact area of the proposed withdrawal as defined in RSA 485-C:21, V-e. The department shall provide the governing body of each municipality with copies of any mailed correspondence sent to the applicant. The department shall provide the applicant with copies of any mailed correspondence sent to or received from the governing body of a municipality.

6 New Section; Exemptions For Large Groundwater Withdrawals. Amend RSA 485-C by inserting after section 22 the following new section:

485-C:23 Exemptions for Large Groundwater Withdrawals.

I. Large groundwater withdrawals associated with a groundwater contamination remediation project approved by the department shall be exempt from the requirements of RSA 485-C:4 XII and XIII, RSA 485-C:14-a, and RSA 485-C:21.

II. Large groundwater withdrawal associated with discreet short-term uses of water such as temporary construction dewatering or water supply exploration shall be exempt from the requirements of RSA 485-C:4 XII and XIII, RSA 485-C:14-a, and RSA 485-C:21.

III. Large groundwater withdrawals approved by the department prior to August 1, 1998 for a community water system as defined by RSA 485:1-a shall be exempt from the requirements of RSA 485-C:4 XII and XIII, RSA 485-C:14-a, and RSA 485-C:21.

7 New Paragraph; Registration Required. Amend RSA 488:3 by inserting after paragraph I the following new paragraph:

I-a. No person shall withdraw more than 57,000 gallons of groundwater in any 24-hour period without registering the withdrawal with the department.

8 New Paragraph; Rulemaking. Amend RSA 488:9 by inserting after VI the following new paragraph:

VII. Criteria to identify temporary and short-term uses of water that are exempt from the requirements of this chapter in accordance with RSA 488:11.

9 Exemption. Amend RSA 488:11 to read as follows:

488:11 Exemption.

I. This chapter shall not apply to a discrete withdrawal arising from an emergency event.

II. This chapter shall not apply to a discrete withdrawal arising from water supply exploration, construction dewatering, or other temporary short-term uses of water as determined by the department.

10 New Sections; Determination of Maximum 24-Hour Withdrawal Volume from a Well or Wells Sited at a Single Property or Place of Business. Amend RSA 488 by inserting after section 11 the following new sections:

488:12 Determination of Maximum 24-hour Withdrawal Volume From a Well or Wells Sited at a Single Property or Place Of Business.

I. By July 31, 2010, any person required to register and report the withdrawal of groundwater in accordance with this chapter shall provide information to the department demonstrating the maximum amount of water extracted not associated with well testing, water supply exploration, or equipment malfunction in any 24-hour period from a well or wells at a single property or place of business from January 1, 1989 through January 2008.

II. Water use information required under paragraph I shall be based on historical records of actual water use measurements.

III. Where information described in II is not available, water use information required by II shall be estimated using best available information including, but not limited to

- (a) Historical water use information.
- (b) Records of machine or process runtime.
- (c) Electrical consumption records.
- (d) Production and sales records.

IV. The commissioner shall:

(a) Approve water use information submitted under paragraph II or III if the estimate of water use is technically appropriate and relies on best available information; or

(b) Determine that a person is not in compliance with the requirements of RSA 488:12 when information submitted under paragraph I or II above is determined to not be technically appropriate and based on best available information,

488:13 Cease and Desist Orders

I. The department may issue a written cease and desist order regarding the withdrawal of groundwater for any violation of RSA 488:12.

II. A written cease and desist order issued by the department under paragraph I may be recorded by the department in the registry of deeds for the county in which the property is situated and, on recordation, such order shall run with the land; provided, however, that an appropriate description of the land involved, including the accurate name of the record owner, shall be incorporated in the cease and desist order. No fee shall be charged for recording such an administrative order; however, the fee for discharge of any such order shall be the same as for the discharge of a lien on real property.

11 Reference Removed. Amend RSA 485-C:14-a to read as follows:

485-C:14-a Notification of Large Groundwater Withdrawal Required. ~~[Notwithstanding any provision of law to the contrary,]~~ Before any person may withdraw 57,600 gallons or more of water in any 24-hour period from a well, such person shall provide written notice to the governing body of the municipality in which the well is located and to the governing bodies of each municipality and each supplier of water within the potential impact area of the proposed withdrawal as defined in RSA 485-C:21, V-e. This section shall apply only to wells established after the effective date of this section.

12 Effective Date. This act shall take effect 60 days after its passage.

SENATOR FULLER CLARK: Thank you very much, Madam President. I move Senate Bill 402 ought to pass with amendment. Senate Bill 402, as amended by the Committee, makes changes to the Department of Environmental Services' rulemaking authority as it applies to groundwater protection. This legislation gives the Department the authority to adopt rules relative to increased withdrawals of 57,600 gallons or more in any 24-hour period from a well or wells sited at a single property or place of business prior to August 1st, 1998, as well as withdrawals from wells at a single property or place of business sited after July 31st, 1998, that are not subject to current rules. Rulemaking authority will also establish the criteria and procedures for acquiring persons to identifying and address effects of withdrawal on surface and subsurface waters, water-related natural resources, and public/private residential and farm wells for the proposed water withdrawals. Additionally, rulemaking authority will also establish – also establishing requirements relative to conservation management plans and procedures by which the Department may deny permission for withdrawals if data indicates that water-related resources are being adversely affected by such withdrawals. Please join the Energy, Environment and Economic Development Committee and vote ought to pass with amendment. Thank you very much, Madam President.

The question is on the adoption of Committee Amendment 0689s. Committee Amendment 0689s adopted.

Sen. Hassan asserted Rule 42 on SB 402.

The question is on the adoption of Ought to Pass as Amended on SB 402.

Motion of Ought to Pass as Amended adopted, ordered to the Committee on Finance (Rule 26).

Sen. Hassan asserted Rule 42 on SB 402.

SB 409, relative to conservation and preservation restrictions. Energy, Environment and Economic Development Committee. Ought to Pass, Vote 4-0. Senator Odell for the committee.

SENATOR ODELL: Thank you, Madam President. I move Senate Bill 409 ought to pass. This bill requires the grantee, and any contingent grantees, to sign the document creating or amending a conservation or preservation restriction. In 1993 the Legislature adopted revisions to RSA 477:47 to prevent any party from creating a conservation easement without the agreement and acknowledgment of all parties involved. After careful reading of the 1993 revision, the Forest Society determined that the language contains a technical flaw. Rather than stating that when an easement is created it must contain both the signatures of the grantee and contingent right-holders, it says that it must contain one signature or the other; clearly, this was not the intent of the law. Senate Bill 409 fixes this error: it changes the word "or" to the word "and." SB 407 [sic] also requires that if an amendment is made to a conservation easement, that amendment must also contain the signature of the grantee and any contingent rights-holder. Please join the Energy, Environment and Economic Development Committee and vote ought to pass. Thank you, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on SB 409.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 519-FN, imposing a per diem fine on dam owners and operators for failure to repair damage. Energy, Environment and Economic Development Committee. Ought to Pass with Amendment, Vote 4-1. Senator Cilley for the committee.

Sen. Cilley, Dist. 6
February 19, 2008
2008-0696s
08/09

Amendment to SB 519-FN

Amend RSA 482:89 as inserted by section 3 of the bill by inserting after paragraph IX the following new paragraph:

X. The provisions of RSA 482:89 shall not apply to actions that are subject to the Federal Power Act (16 U.S.C. sections 791a-825r).

SENATOR CILLEY: Thank you, Madam President. I move SB 519 ought to pass with amendment. This legislation will impose a fine on dam owners and operators who fail to repair damage. Throughout New Hampshire there are approximately 2800 dams that are not state-owned. They pose risks to 10,000 homes, 250 to 300 state road crossings, and somewhere in the neighborhood of 2,000 town road crossings. Between 2000 and 2006 there were approximately 250 letters of deficiency outstanding and nine administrative orders. Many of these letters outlining needed maintenance or repairs are ignored and contribute to the deterioration of New Hampshire's dams. These 2800 dams, if not properly maintained, pose a substantial risk to health and property. This legislation will increase the penalties that the DES can impose on dam owners for failure to comply with an order from the Department, from \$2,000 to \$5,000 per violation, with each day of noncompliance constituting a separate violation. SB 519 also allows the court to impose a fine of \$20,000 for a violation of a state dam safety statute. These changes bring the penalty provisions for New Hampshire's dam safety statutes consistent with the

penalty provisions in statutes governing other DES programs such as the Comprehensive Shoreland Protection Act. SB 519 will give teeth to the Department's penalty provisions and act as a deterrent to those who choose to ignore the Department's maintenance orders. Please join the Energy, Environment and Economic Development Committee and vote ought to pass with amendment. Thank you.

(The Chair recognized Sen. Barnes.)

SENATOR BARNES: I just want to be sure everyone understands the levity of these fines on these dam owners. I know it's very important and we're going to probably have some floods coming up in April that are going to cause a problem as we have in the past, I understand that. But I also want you to understand there's an awful lot of dams out there that are owned by individuals. And I'm just waiting for someone in your district or my district that is an owner of one of these dams that gets fined \$20,000 for not fixing his dam and the poor guy or gal hasn't got a nickel to fix the darn thing, and what happens to them. I know, I heard plenty of testimony on this: Oh, it's not going to happen. But that's not what this law says; this law says it could happen. So I just want you to be aware of the fact that some poor slob out there with a dam could face a \$20,000 fine. Keep it in mind when somebody comes to you, begging for your help. Thank you.

(The Chair recognized Sen. Kenney for a question of Sen. Cilley.)

SENATOR KENNEY: Sen. Cilley, with dams, I see here in the law there are three classifications; there is low-hazard potential, significant-hazard potential, and high-hazard potential. And each one, as far as registration is concerned, a certain amount is required of each one: 400 for the lower, 750 for the middle, and for the highest hazard, \$1500. Was there any discussion in the Committee to make the penalty higher for the higher-hazard dam versus the lower-hazard dam? And the reason why I ask this is that in a small pond, if it's a low hazard and it just happens to drain out, it really has no impact on anybody, but it's the high-hazard dams that we need to make sure that are repaired, because they could actually harm human life as well as the public safety of wherever that dam might be.

SENATOR CILLEY: Thank you for the question, Sen. Kenney. First of all, the DES works with dam owners very closely in attempting to remediate any issues with a dam. Their interest is not in imposing these fines or bringing penalties. Their interest is getting dam owners to do what they need to do, often at very low costs. And a quick example of that are tree roots in a dam in my district that, had they been repaired, would not have ended up to be as extensive a problem as they were. So the first step is, the DES works very closely with the dam owner and tries to assist them. Only in cases where they're recalcitrant, if you will, and they are ignoring the letters of deficiency, would these penalties be imposed. In addition to that, these penalties are imposed on the basis of the danger that life and property and put to with the magnitude. So the answer to your question is, essentially, yes. Although it's not stipulated here, you know the DES and the courts, you know, would be looking at what kind of danger is posed to the people downstream of that dam.

SENATOR KENNEY: And one other question, if I might. And the effective date would be January 1st, 2009, and I'm just questioning if that's the appropriate effective date, 'cause I don't know of too many dams that are going to be repaired in the middle of the winter, so I just point that out as well. "Would you believe."

SENATOR CILLEY: Oh. Yes.

SENATOR KENNEY: Thank you.

(The Chair recognized Sen. Letourneau for a question of Sen. Barnes.)

SENATOR LETOURNEAU: Sen. Barnes, could you help me with my memory. Did we raise the fees for dam inspections last year?

SENATOR BARNES: I believe we did.

SENATOR LETOURNEAU: Do you recall what we raised them to?

SENATOR BARNES: I don't, but I betcha the gentleman beside you could tell you; seeing he's the chairman of Finance, –

SENATOR LETOURNEAU: He didn't speak.

SENATOR BARNES: – he probably has that right on the top of his head. He could write you a note. I'm hearing from my right that it was doubled.

SENATOR LETOURNEAU: Thank you.

The question is on Committee Amendment 0696s.

Committee Amendment 0696s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 519-FN.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

Senators Barnes and Letourneau are in opposition to SB 519-FN.

SB 335, allowing certain judges to terminate membership in the judicial retirement plan and elect senior active status. Executive Departments and Administration Committee. Ought to Pass, Vote 5-0. Senator Fuller Clark for the committee.

SENATOR FULLER CLARK: Thank you very much, Madam President. I move Senate Bill 522-FN [sic] ought to pass with amendment.

PRESIDENT LARSEN: That should be 335.

SENATOR FULLER CLARK: Sorry. Thank you very much, Madam President. I move Senate Bill 335 – (laughter) – ought to pass. This legislation would allow certain judges, after ten years of service, to terminate membership in the judicial retirement plan and elect senior active status. The senior active status would enable the judge to be appointed to sit on cases on a per diem basis and would save the State a significant amount of money. The judge would also give up his or her State-paid medical and surgical benefits which would be another cost saving. The ED&A Committee recommends that Senate Bill 335 be adopted and asks for your support. Again, thank you very much, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on SB 335.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 438, relative to contractor accountability and disclosure in the public works construction procurement process. Executive Departments and Administration Committee. Ought to Pass with Amendment, Vote 6-0. Senator Downing for the committee.

**Senate Executive Departments and Administration
February 20, 2008
2008-0751s
05/09**

Amendment to SB 438

Amend RSA 21-I:81-b as inserted by section 1 of the bill by replacing it with the following:

21-I:81-b Worksite Accountability. At the onset of site work on any state construction project, the general contractor or designated project construction manager, if any, shall provide to the awarding agency a list of all subcontractors, and independent contractors on the job site with a record of the entity to whom that subcontractor or independent contractor is directly contracted, and by whom that contractor or subcontractor is insured for worker's compensation purposes. This list shall be posted on the jobsite and updated as needed and also posted on the agency website, to be updated weekly. Under no circumstances shall a subcontractor or independent contractor be present on a state construction site without the contractor's name and direct contracting relationship being posted in the visible location at the worksite.

MOTION TO TABLE

Sen. Downing moved to have SB 438 laid on the table.

Motion adopted.

LAI D ON THE TABLE

SB 438, relative to contractor accountability and disclosure in the public works construction procurement process.

SB 440, relative to requiring occupational boards and commissions to include relevant military experience or training in satisfying requirements for engaging in a regulated profession. Executive Departments and Administration Committee. Ought to Pass, Vote Senator Cilley for the committee.

SENATOR CILLEY: Thank you, Madam President. I move that SB 440 ought to pass. This legislation requires boards and commissions which regulate occupations and professions to adopt rules for including credit for satisfying requirements for examination for licensure certification or registration with an applicant's military experience and training. Unfortunately, when some guardsmen and reservists return from active duty, though many of them have received excellent training and experience in specialized areas, they may not receive credit for this. This legislation would allow the opportunity to use this experience to show proficiency in order to obtain licensure. Testimony at the public hearing indicated that the area of private security is the most often problematic whereby these soldiers must take lower-paying employment because they are not allowed any credit for weapons training and experience. The ED&A Committee unanimously recommends that SB 440 be adopted and asks for your support. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on SB 440.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 441, relative to collective bargaining by judicial employees. Executive Departments and Administration Committee. Ought to Pass, Vote 6-0. Senator Kelly for the committee.

MOTION TO TABLE

Sen. Kelly moved to have SB 441 laid on the table.

Motion adopted.

LAI D ON THE TABLE

SB 441, relative to collective bargaining by judicial employees.

SB 475, relative to the definition of advance fees in the real estate practice act. Executive Departments and Administration Committee. Ought to Pass, Vote 3-0. Senator Kelly for the committee.

SENATOR KELLY: Thank you, Madam President. I move SB 475 ought to pass. This legislation excludes pays paid for electronic publication from the definition of "advance fees" in the Real Estate Practice Act. The legislation was requested by the New Hampshire Real Estate Commission because of recent litigation. The legislation merely brings the real-estate statutes into the practices of today to include the internet. The ED&A Committee recommends that 475 be adopted and asks for your support. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on SB 475.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 522-FN, relative to licensing requirements for small quantity biodiesel producers and distributors. Executive Departments and Administration Committee. Ought to Pass with Amendment, Vote 6-0. Senator Fuller Clark for the committee.

Senate Executive Departments and Administration

February 21, 2008

2008-0762s

08/09

Amendment to SB 522-FN

Amend the title of the bill by replacing it with the following:

AN ACT relative to licensing requirements for small quantity biodiesel producers and distributors and prohibiting the sale or delivery of biodiesel not meeting the state ASTM standard.

Amend the bill by inserting after section 2 the following and renumbering the original sections 3 to read as 5, respectively:

3 New Section; Sub-Standard Biodiesel. Amend RSA 260 by inserting after section 52-e the following new section:

260:52-f Biodiesel Not Meeting ASTM Fuel Quality Standards Not to be Sold in the State.

I. A person shall not sell or deliver biodiesel or biodiesel blend in this state that does not meet the ASTM standard as defined in RSA 259:6-a.

II. A person who violates paragraph I of this section commits a violation and shall, upon conviction, be sentenced to pay a fine of not less than \$100 nor more than \$500.

III. In addition to any fine provided in paragraph II, a person who violates paragraph I shall be assessed a penalty of \$1,000 or \$10 per gallon of biodiesel or biodiesel blends involved in the sale or delivery, whichever is greater.

IV. Any person authorized by the department may enter any place where fuels are produced or stored, and may physically inspect any tank, reservoir, or other container that can be used for the production, storage, or transportation of biodiesel or biodiesel blends. Inspection may also be made of any equipment used for or in connection with the production,

storage, or transportation of biodiesel or biodiesel blends. A person authorized by the department may detain a vehicle, vessel, or railroad tank car placed on a customer's siding for use or storage for the purpose of inspecting fuel tanks or fuel storage tanks as necessary to determine the amount and composition of the fuel. A person authorized by the department may take and remove samples of biodiesel, either pure or blended with petroleum diesel, in reasonable quantities necessary to determine the composition of the fuel.

V. A person who refuses to allow an inspection authorized by this section commits a violation and shall, upon conviction, be sentenced to pay a fine of \$1,000 for each refusal.

4 New Section; Biodiesel; Recordkeeping for Distributors. Amend RSA 260 by inserting after section 43-a, the following new section:

260:43-b Additional Recordkeeping Requirements for Biodiesel Distributors. In addition to the retention of records pursuant to RSA 260:43, biodiesel distributors shall maintain and keep for a period of 4 years records sufficient to demonstrate that all biodiesel sold within the state meets the applicable ASTM International fuel quality standard for biodiesel, D6751. Failure to maintain appropriate records or failure to demonstrate compliance with the applicable ASTM standard may result in loss of license issued pursuant to RSA 260:36 and RSA 260:36-d.

2008-0762s

AMENDED ANALYSIS

This bill:

I. Requires certain distributors of biodiesel to be licensed by the department of safety.

II. Prohibits the sale or delivery of biodiesel not meeting the ASTM standard within the state.

III. Requires biodiesel distributors to keep certain records.

SENATOR FULLER CLARK: Thank you very much, Madam President. Now I would like to move Senate Bill 522-FN ought to pass with amendment. This legislation was introduced so that distributors of biodiesel would be licensed by the Department of Safety. The amendment requires that biodiesel or biodiesel blends in New Hampshire must meet the ASTM standards; it also imposes fines for violations, provides for state inspections, as well as requirements for recordkeeping. Adoption of this important legislation will allow us to take grease derived from vegetable oils or animal fat that is currently going into our landfills and use it instead for the production of biodiesel. The legislation also provides that small dealers who produce under 10,000 gallons would be exempt from bonding. The ED&A Committee unanimously recommends that Senate Bill 522 be adopted as amended, and asks for your support. Thank you, Madam President.

The question is on the adoption of Committee Amendment 0762s.

Committee Amendment 0762s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 522-FN.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 525, establishing the fourth Sunday in May as Emergency Medical Technician Memorial Day. Executive Departments and Administration Committee. Ought to Pass, Vote 3-0. Senator Cilley for the committee.

MOTION TO TABLE

Sen. Cilley moved to have SB 525 laid on the table.

Motion adopted.

LAID ON THE TABLE

SB 525, establishing the fourth Sunday in May as Emergency Medical Technician Memorial Day.

SB 526, relative to the death benefit for police officers and firefighters killed in the line of duty. Executive Departments and Administration Committee. Ought to Pass with Amendment, Vote 2-0. Senator Kelly for the committee.

Sen. D'Allesandro, Dist. 20

February 19, 2008

2008-0709s

09/03

Amendment to SB 526

Amend RSA 21-I:29-a, III(d) as inserted by section 1 of the bill by replacing it with the following:

(d) If the commissioner of safety determines that the death is not a qualified line-of-duty death, he or she shall cause the decedent's family to be notified. The family may appeal the determination within 180 days of the date of the notification by notifying the commissioner of safety in writing. In the event of an appeal for a firefighter, the attorney general shall appoint an appeal hearing panel consisting of one medical doctor, one member appointed by the New Hampshire Association of Fire Chiefs, one member appointed by the Professional Firefighters of New Hampshire, and 2 citizens who are not associated with the professions of police officer or firefighter, at least one of whom is a attorney admitted to practice in New Hampshire. In the event of an appeal for a police officer, the attorney general shall appoint an appeal hearing panel consisting of one medical doctor, one member appointed by the New Hampshire Association of Chiefs of Police, one member appointed by the New Hampshire Police Association, and 2 citizens who are not associated with the professions of police officer or firefighter, at least one of whom is an attorney admitted to practice in New Hampshire. The commissioner of safety shall forward to the appeal panel all the information that he or she considered in reaching the determination. Upon request of the family, the appeal hearing shall be exempt from the right-to-know law, RSA 91-A. Hearings shall be conducted in conformance with RSA 541-A and the department of justice Jus 800 administrative procedural rules. The appeal hearing panel shall review the evidence de novo, may receive additional evidence from the family or others, and shall determine by a preponderance of the evidence whether the decedent's death was a qualified line-of-duty death.

SENATOR KELLY: Thank you, Madam President. I move SB 526 ought to pass with amendment. This bill establishes procedures for the award of the death benefit for police officers and firefighters killed in the line of duty. The bill was the result of the work of the study committee established in last year's SB 169. The bill establishes which police officers and firefighters may qualify for the death benefit. It defines who would be entitled to receive the benefit and provide access to the Department of Safety for any required document. The amendment language, submitted by the Attorney General's Office, provides a method whereby a family member may appeal a denial. The ED&A Committee recommends that SB 526 be adopted as amended and asks for your support. Thank you.

(The Chair recognized Sen. D'Allesandro to speak.)

SENATOR D'ALLESANDRO: Thank you, Madam President. Madam President, I'd like to express my thanks and gratitude to the Committee who worked on this bill, along with the Attorney General in terms of formulating the process by which the benefit would be taken care of. And the amendment talks about an appellate process. So I think we have done something very constructive, put together a good plan, with the help and the input from the Attorney General's Office, so that we have something in place that will work, it will work in an expeditious manner, and those who are deserving obviously will receive the benefit. So I thank my colleagues for spending the time with me this summer to work this out, to get this done. We had all of those parties in; I think we had good discussion and debate. Thanks to Sen. Barnes for his input; he gave us some really solid stuff to work with, and we appreciate that. By working together we do produce good legislation, and that's my point. Thank you, Madam President.

**The question is on the adoption of Committee Amendment 0709s.
Committee Amendment 0709s adopted.**

**The question is on the adoption of Ought to Pass as Amended
on SB 526.**

**A roll call was requested by Sen. Bragdon, seconded by Sen.
Barnes.**

The following Senators voted Yes: Gallus, Reynolds, Kenney, Sgambati, Cilley, Janeway, Odell, Roberge, Kelly, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, DeVries, Letourneau, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.

The following Senators voted No: None.

Yeas: 23 - Nays: 0

**Motion of Ought to Pass as Amended adopted, bill ordered to Third
Reading.**

Recess/Out of Recess.

SB 512-FN, relative to emergency management powers. Health and Human Services Committee. Ought to Pass with Amendment, Vote 5-0. Senator Sgambati for the committee.

Sen. Sgambati, Dist. 4

March 4, 2008

2008-0808s

01/04

Amendment to SB 512-FN

Amend the bill by replacing section 2 with the following:

2 New Section; Communicable Disease; Acute Care Centers; Ethics Committee. Amend RSA 141-C by inserting after section 25 the following new section:

141-C:26 Acute Care Centers. The commissioner may establish, operate, or authorize the operation of temporary acute care centers for the purpose of the delivery of acute and critical medical services to persons who would normally require admission to an acute care hospital, when there is a public health incident as defined in RSA 508:17-a, II(c) and when the acute care hospitals in the area do not have the physical and human resources necessary to meet the demand or anticipated demand

for medical care. Any such facility so established or designated shall be exempt from the provisions of RSA 151 and RSA 151-C. The commissioner shall adopt rules, pursuant to RSA 541-A, regarding the facility and staffing requirements, screening and admission criteria, payment and reimbursements, clinical standards, recordkeeping and discharge criteria for acute care centers. For purposes of immunity, actions taken pursuant to this section shall be considered an emergency management function under RSA 21-P:41, I.

Amend RSA 21-P:53, III as inserted by section 3 of the bill by replacing it with the following:

III. If there is a statewide or regional shortage or threatened shortage of any anti-toxins, serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents, the commissioner may, subject to the discretion and control of the governor, control, restrict, and ration the use, sale, dispensing, distribution, or transportation of such products as necessary to best protect the health, safety, and welfare of the people of this state. In making rationing or other supply and distribution decisions, the commissioner shall determine high risk or critical need groups that shall receive priority for such products.

2008-0808s

AMENDED ANALYSIS

This bill:

I. Authorizes the commissioner of the department of health and human services to establish temporary acute care centers for the delivery of medical services if there is a public health emergency.

II. Reestablishes the laws regarding public health emergency management powers and the safe disposal of corpses, both of which were repealed in 2002.

III. Establishes a commission to study the authority to practice or provide health and medical care in the event of a public health emergency.

SENATOR SGAMBATI: Thank you, Madam President. I move Senate Bill 512-FN ought to pass with amendment. The bill authorizes the Commissioner of Health and Human Services to establish temporary acute care centers for the delivery of medical services during a public health emergency. It also reestablishes laws regarding public health emergency powers in the safe disposal of corpses. Last, the bill establishes a commission to study the authority to practice or provide health and medical care in the event of a public health emergency. The Committee feels that this bill provides an important tool to effectively manage a medical emergency within the state, and it provides DHHS with the authority to advise New Hampshire citizens on how to properly deal with public health threats. The Health and Human Services Committee recommends Senate Bill 512-FN ought to pass with amendment, and asks for your support. Thank you, Madam President.

The question is on the adoption of Committee Amendment 0808s.

Committee Amendment 0808s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 512-FN.

Motion of Ought to Pass as Amended adopted, bill ordered to the Committee on Finance (Rule 26).

SB 514-FN, relative to mercury exposure reduction and requiring insurance coverage for mercury-free fillings, vaccines, and injections for certain persons. Health and Human Services Committee. Inexpedient to Legislate, Vote 3-2. Senator Estabrook for the committee.

SENATOR ESTABROOK: Thank you, Madam President. I move Senate Bill 514 inexpedient to legislate. The Committee heard testimony that the original bill would jeopardize the availability of life-saving vaccines. The Committee believes access to safe and effective vaccines must be maintained. Further, the fiscal note indicated that the vaccine assessment would likely rise as a result of this bill, and since the Committee had heard testimony on another bill that the vaccine assessment's already dramatic rise is a problem in need of study, we felt SB 514 should not move forward. The sponsor then asked committee consideration of an amendment that would have directed the legislatively created study committee on autism to, quote, "examine the effect of vaccines containing thimersol on autism spectrum disorder," end quote. The Committee debated this approach and determined that such a charge called for a scientific study that was beyond the study committee's capacity. Furthermore, the chair of the study committee indicated that they are not in support of amending its charge and that it would be counterproductive, diverting the committee from other valuable work on addressing the serious issue of autism spectrum disorder. Thus, while the Committee understands the sponsor and support his deep commitment to this issue, SB 514 should be found inexpedient to legislate. We ask your support of the Committee.

(The Chair recognized Sen. Kenney to speak.)

SENATOR KENNEY: Thank you, Madam Chairman. And I appreciate those comments by Sen. Estabrooks [sic]. I brought this bill in because I have a constituency in my neck of the woods of a vaccination coalition who, each parent has kids that are autistic. There's no doubt that the General Court recognizes that there's a public concern about thimersol and mercury content in vaccines. And, quite frankly, mercury exposure can be very harmful to a woman that is pregnant and particularly to the fetus. I think the Legislature really has to work with Health and Human Services to try to eradicate mercury additives in vaccines, period. Frankly, right now they don't use it in their vaccines, as it stands right now. However, they have the potential to use mercury additives in vaccines if they needed to in case of an outbreak or in case they had to use their stockpile that they have. And the reality is, is that at the federal level we're recognized that mercury's not a good thing to have in vaccines, and that the Congress is encouraging that if a woman, or excuse me, a child that's four or under should not use vaccines with mercury additives in them. And the federal - Congress has also asked that the manufacturing companies phase out using mercury additives in their vaccinations, and a lot of them are doing it. But I think New Hampshire needs to continue to work on ways of getting rid of mercury additives in vaccinations altogether. So I brought this forth on their behalf, and I think we still need to continue to address this. I thank you, Madam President.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on SB 514-FN.

Motion of Inexpedient to Legislate adopted.

SB 329, relative to the payment of retired judges serving on screening panels for medical injury claims. Judiciary Committee. Ought to Pass with Amendment, Vote 5-0. Senator Clegg for the committee.

Senate Judiciary
February 20, 2008
2008-0737s
09/10

Amendment to SB 329

Amend the title of the bill by replacing it with the following:

AN ACT relative to payment of members of screening panels for medical injury claims.

Amend RSA 519-B:3, IV as inserted by section 1 of the bill by replacing it with the following:

IV. The chief justice of the superior court shall establish the compensation of the panel chairperson if he or she is not otherwise compensated by the state of New Hampshire. ***A retired judge serving as chairperson of a panel may be compensated pursuant to RSA 493-A:1-b.*** Other panel members shall ~~[serve without compensation or payment of expenses]~~ ***be compensated at a rate of \$475 per day of service.***

2008-0737s

AMENDED ANALYSIS

This bill requires compensation for persons serving as members of screening panels for medical injury actions.

SENATOR CLEGG: Thank you, Madam President. I move Senate Bill 329 ought to pass with amendment. This legislation deals with the payment for retired judges who sit as the chairperson on the Medical Malpractice Claims Panels. As introduced, the bill would have paid the chairperson, or the retired judge, at their established judicial rate, which depends on which court they've actually retired from. The Judiciary Committee could not understand why a retired judge should be compensated for service while the doctor and the lawyer, both who've had the same amount of schooling and sometimes maybe more as the judge, would be expected to sit for free. It requires all three to make the panel. The committee amendment sets the payment for the doctor and the attorney at the lowest rate a judge would be compensated at, less \$50. So the lowest rate would be \$529; we've decided that – I'm sorry, \$500 – we decided \$475 a day. While the bill introduced did not have a fiscal note, we realize that, as amended, there is a fiscal impact, and we ask that the bill be referred to Senate Finance for review. The Judiciary Committee asks for your support on ought to pass as amended. Thank you.

The question is on the adoption of Committee Amendment 0737s. Committee Amendment 0737s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 329.

Motion of Ought to Pass as Amended adopted, bill ordered to the Committee on Finance (Rule 26).

SB 353-FN-L, relative to illegal aliens. Judiciary Committee. Inexpedient to Legislate, Vote 3-2. Senator Foster for the committee.

SENATOR FOSTER: Thank you, Madam President. I move SB 353 inexpedient to legislate. This legislation primarily sought to require state and local law enforcement agencies to enforce immigration laws to the extent authorized by federal law. The Committee received compelling

testimony in opposition to the legislation. The majority of the Committee had significant concerns with this proposed mandate on local law enforcement officials, as well as issues of federal preemption. If anyone is committing a crime, whether they're U.S. citizen or illegal alien, our law enforcement officials already have full authority to make an arrest. Leadership on this subject needs to come from the federal government, and we should not have each state creating a varying patchwork of laws and regulations. Having enforcement come locally will mean unequal enforcement of our federal laws which would drive undocumented aliens from places of higher enforcement to those of low enforcement. Federal enforcement is necessary to ensure equal enforcement of the law. Therefore, the Judiciary Committee recommends that SB 353 be voted inexpedient to legislate and asks for your support.

On a personal note, I will say that when bills like this come forward, my antenna for discrimination sometimes goes up. While this bill may not have the intent, it could have that result. I live in Nashua and represent a city which is very diverse with many immigrant families who have come here for the "American dream." I feel we should welcome those families with open arms. The issue of discrimination has been around for – the issue of immigration's been around for a very long time. Earlier today we were in a moving service and it made me think of a line from the Old Testament that I think about when I see laws like this, and it's from Leviticus, it says: "When foreigners reside among you in your land, do not mistreat them. The foreigners among you must be treated as your native born. Love them as yourself, for you yourself were foreigners in the land of Egypt." This law, to me, would break down that relationship between those of us who live there already and the immigrant families, and particularly could break down the relationship, importantly, between the police and law enforcement. The immigrant community has to trust law enforcement and not see law enforcement as INS officers. Because if that relationship breaks down, important opportunities for the important law enforcement that we need our local police officers to do will break down; they will learn to distrust the police. So, again, to me this whole area has to be dealt with by our federal government. None of us, no one in here condones illegal immigration and all of us want our borders protected. This is just not the way to go about doing that. So I would ask that you support the committee report of inexpedient to legislate. Thank you, Madam President.

(The Chair recognized Sen. Kenney to speak.)

SENATOR KENNEY: Thank you, Madam President. I would ask the body to overturn the committee report of ITL on Senate Bill 353. This bill is about legal immigration – it's not a bill about legal immigration, but it's a bill about illegal immigration. Some of you might ask how illegal aliens live in New Hampshire. Frankly, we don't know. Many of our officials are getting discouraged from asking that question. It's become politically incorrect to ask the question. Do we want to become like Maine where state employees may not even ask a question regarding immigration status of anyone applying for anything in Maine. It has, to many, become a sanctuary state for illegal aliens. There has been an estimated 40 percent increase from 2006-2007, based on increasing number of people with Social Security numbers that read 999-99-9999, holding Maine licenses. How many are coming? And how do they know how many if you do not know ... if you do not declare that it's okay to keep track. In some states state employees are now being penalized for asking if someone is illegal or legal. This is the world turned upside down for many Americans who value their citizenship and see their tax

dollars going to support hospital stays and prison stays by people who do not pay their taxes. This bill would send a message in New Hampshire that we are not going to be a sanctuary state, and that it's okay to enforce the law when it comes to illegal immigration. Now, given that Maine is a sanctuary state, there's a possibility, by default, that we possibly might become a sanctuary state ourselves. We have to do what we can at the state level, because we know that the federal law has run away from the issues, which is an important issue for every American. We should not run away at the state and leave our law enforcement community without guidance on how to handle these situations. We need to know what we can do at the state level. This bill would send a clear message to our mayors of New Hampshire to not even entertain the idea of becoming a sanctuary city. It is what the people want – secure borders, secure communities – and for us to stand up for what it is to mean to be a U.S. citizen, I can think of no more New Hampshire bill than this one today. If we are to protect our heritage, our legal immigration heritage in our culture, we need to support this bill today. Lastly, it is the illegal immigrants, or excuse me, the legal immigrants who are enraged at the illegal immigrants because they got in line and they did it the right way.

Now, on a personal note, I have a wife who came to this country as a legal immigrant, and she got in line with everyone else who wanted to come to this country. And we're not saying that you can't live in the United States, as long as you're documented, or you're visiting and you're documented, or you're in a process of where you're coming – becoming a legal citizen. Illegal immigration is just that, it's illegal. And apparently there's a lot of people in this country who really don't understand that and who don't understand that in New Hampshire, is that if you want to become a legal American, you get in line and you apply through that INS application process. If we don't take care of this issue at the state, federal level, or if we don't develop a partnership, we're going to continue to see our state, our country overrun by people that we don't even know, that are here in illegal status. For many years, or I should say for many months, I worked on the northern border of this country. There are hundreds of illegal immigrants coming into New Hampshire on a daily basis. You do not know that, you do not see them. But they're here and they're going to bigger cities, but they're traversing right through our, our state. And so what happens when someone like Chief Chamberlain, who picks up illegal immigrants and doesn't know what to do with them, and he tries to pass them off to the immigration/custom enforcement agency and they won't take him, they say let him get. Where do they go? Who knows. But the bottom line is that we don't have a very good process in this state or this country when it comes to making sure that illegal immigrants either go back to where they came from or that somehow they're deported or somehow they're taken care of with some other arrangement. It's not only our problem, it's the nation's problem, but with state's right, as being someone who is a strong proponent of state's rights, we gotta start somewhere. And the federal government is not doing its job, they're not doing their duty, and somehow the states have to pick up this important issue. Or otherwise, ladies and gentlemen, we're going to wake up to find out that to be a citizen in this country, it's going to be something that somehow has been given away to a lot of illegal immigrants who didn't earn the title to be called "American." So that's the purpose of this bill, it's to send a strong message that we do not want to be a sanctuary state, that we want to be a non-sanctuary state. Thank you, Madam President.

(The Chair recognized Sen. Hassan to speak.)

SENATOR HASSAN: Thank you, Madam President. I just wanted to respond a little bit to something I just heard. I think this issue can be quite an emotional one for people, I think it sparks a lot of public interest. But there is a federal immigration policy in place that does, in fact, require all employers to check documentation and the status of applicants; it's called an I-9 form, all employers use it throughout this country. We are all in favor of securing our borders, we are all in favor of enforcing immigration laws; many of us favor immigration policy reform at the federal level, and I think that that's where it belongs. Thank you very much, Madam President.

The question is on the adoption of the committee recommendation of Inexpedient to Legislate on SB 353-FN-L.

A roll call was requested by Sen. Kenney, seconded by Sen. Barnes.

The following Senators voted Yes: Reynolds, Sgambati, Cilley, Janeway, Kelly, Gottesman, Foster, Larsen, DeVries, D'Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Kenney, Odell, Roberge, Bragdon, Clegg, Gatsas, Barnes, Letourneau, Downing.

Yeas: 13 - Nays: 10

Motion of Inexpedient to Legislate adopted.

SB 405, establishing a committee to study driver's license revocation and continuous alcohol monitoring. Judiciary Committee. Inexpedient to Legislate, Vote 5-0. Senator Clegg for the committee.

SENATOR CLEGG: Thank you, Madam President. I move Senate Bill 405 inexpedient to legislate. The legislation sought to create a committee to study driver's license revocation and continuous alcohol monitoring. Testimony received at the public hearing indicated that these continuous alcohol monitoring devices are already being used in Carroll County in order to monitor offenders with abuse problems. The Committee fails to understand why, if these devices are already being used in the state, we need to create another study committee. Therefore, the Judiciary Committee recommends Senate Bill 405 be found inexpedient to legislate and asks for your support. Thank you.

The question is on the committee recommendation of Inexpedient to Legislate on SB 405.

Motion of Inexpedient to Legislate adopted.

SB 356-FN, prohibiting offenders against children from attending certain activities or events. Judiciary Committee. Ought to Pass with Amendment, Vote 5-0. Senator Clegg for the committee.

**Senate Judiciary
March 5, 2008
2008-0854s
10/01**

Amendment to SB 356-FN

Amend the title of the bill by replacing it with the following:

AN ACT prohibiting offenders against children from participating in or being a spectator at certain activities or events.

Amend the bill by replacing section 1 with the following:

1 New Section; Registration of Criminal Offenders; Special Restrictions on Offenders Against Children. Amend RSA 651-B by inserting after section 12 the following new section:

651-B:13 Special Restrictions on Offenders Against Children. No person who is required to be registered as an offender against children for a violation of RSA 632-A:3, III or RSA 632-A:2, II, shall, for the duration of his or her registration requirement, participate in or be a spectator at any public activity or event organized principally for the participation of children under 13 years of age. Any person who violates the provisions of this section shall be guilty of a misdemeanor.

2008-0854s

AMENDED ANALYSIS

This bill prohibits any person who is required to be registered as an offender against children from participating in or being a spectator at any activity or event organized principally for the participation of children under 13 years of age.

SENATOR CLEGG: Thank you, Madam President. I move Senate Bill 356 ought to pass with amendment. As introduced, the bill sought to prohibit any person who is required to be registered as an offender against children from attending any school-sponsored activity or event which the children under 13 years of age are involved or may be present, except if a written waiver was obtained. Each of us have read recent headlines in New Hampshire where convicted pedophiles were present at schools and where police officers have felt unable to take any action since there was no crime being committed. The Committee received compelling testimony at the public hearing, both in support of, and in opposition to the legislation. Concerns were raised regarding providing a waiver that would enable someone to attend an event, and the Committee felt that given the liability involved, no organization would ever give one. Additionally, since many events in our cities and towns are sponsored by local recreation departments and attended by children, these would not have been covered under the language as introduced. The committee amendment tightens up the language in order to address all of these concerns. The violation provision makes it a misdemeanor which would enable the court to determine in each particular case what the penalty should be upon conviction. The Judiciary Committee recommends Senate Bill 356 be adopted as amended and asks for your support. Thank you.

The question is on the adoption of Committee Amendment 0854s. Committee Amendment 0854s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 356-FN.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 507-FN, relative to extended terms of imprisonment for street gang members. Judiciary Committee. Ought to Pass with Amendment, Vote 5-0. Senator Reynolds for the committee.

Senate Judiciary
March 5, 2008
2008-0857s
04/10

Amendment to SB 507-FN

Amend the title of the bill by replacing it with the following:

AN ACT relative to extended terms of imprisonment for criminal street gang members.

Amend the bill by replacing sections 1 and 2 with the following:

1 Extended Term of Imprisonment; Criminal Street Gang Members. Amend RSA 651:6, I (o) and (p) to read as follows:

(o) Has purposely, knowingly, or recklessly with extreme indifference to the value of human life committed an act or acts constituting first degree assault as defined in RSA 631:1 against a person under 13 years of age where the serious bodily injury has resulted in brain damage or physical disability to the child that is likely to be permanent; [or]

(p) Has committed murder as defined in RSA 630:1-b against a person under 13 years of age[-]; **or**

(q) Has knowingly committed any of the following offenses as a criminal street gang member, or for the benefit of, at the direction of, or in association with any criminal street gang, with the purpose to promote, further, or assist in any such criminal conduct by criminal street gang members:

(1) Violent crime as defined in RSA 651:5, XIII.

(2) A crime involving the distribution, sale, or manufacture of a controlled drug under RSA 318-B:2.

(3) Class A felony theft where the property stolen was a firearm.

(4) Unlawful sale of a pistol or a revolver.

(5) Witness tampering.

2 Extended Term of Imprisonment; Criminal Street Gang Member Defined. Amend RSA 651:6, I-a to read as follows:

I-a. As used in this section[-]:

(a) "Law enforcement officer" [is] means a sheriff or deputy sheriff of any county, a state police officer, a constable or police officer of any city or town, an official or employee of any prison, jail, or corrections institution, a probation-parole officer, a juvenile probation and parole officer, or a conservation officer.

(b) "Criminal street gang member" means an individual to whom 2 or more of the following apply:

(1) Admits to criminal street gang membership;

(2) Is identified as a criminal street gang member by a law enforcement officer, parent, guardian, or documented reliable informant;

(3) Resides in or frequents a particular criminal street gang's area and adopts its style of dress, its use of hand or other signs, tattoos, or other physical markings, and associates with known criminal street gang members; or

(4) Has been arrested more than once in the company of individuals who are identified as criminal street gang members by law enforcement, for offenses that are consistent with usual criminal street gang activity;

(c) "Criminal street gang" means a formal or informal ongoing organization, association, or group of 3 or more persons,

which has as one of its primary objectives or activities the commission of criminal activity, whose members share a common name, identifying sign, symbol, physical marking, style of dress, or use of hand sign, and whose members individually or collectively have engaged in the commission, attempted commission, solicitation to commit, or conspiracy to commit 2 or more the following offenses, or a reasonably equivalent offense in another jurisdiction, on separate occasions within the preceding 3 years:

- (1) Violent crimes, as defined in RSA 651:5, XIII;*
- (2) Distribution, sale, manufacture, of a controlled drug in violation of RSA 318-B:2;*
- (3) Class A felony theft;*
- (4) Unlawful sale of a pistol or revolver; or*
- (5) Witness tampering.*

2008-0857s

AMENDED ANALYSIS

This bill provides for extended terms of imprisonment for offenses committed by criminal street gang members.

SENATOR REYNOLDS: Thank you, Madam President. I move SB 507-FN ought to pass with amendment. Senate Bill 507 deals with the extremely difficult and complex topic of how to enact the proper legislation for those who are involved in street gang activities. Testimony received at the public hearing dealt with concerns in the Attorney General's Office as well as some of our local police departments, especially in the southern part of our state where increases in gang-related crimes are occurring. As bordering states are enacting tougher criminal street-gang-member legislation, we're seeing increased activities here. SB 507 does not create any new crime, but rather provides for enhanced penalties for those who are street-gang members engaged in criminal acts. The Committee also heard concerns regarding the breadth of the bill as introduced. We took those comments and concerns seriously and we've proposed an amendment that makes it a much tighter bill which will protect the rights of association and freedom of speech. The Judiciary Committee wishes to be perfectly clear that individuals have a constitutional right to join groups, to dress in similar clothing, and to freely associate with others. However, when those associations choose to break the laws, then there are circumstances where enhanced penalties should be available. The Judiciary Committee recommends that SB 507 be adopted as amended, and asks for your support. Thank you. Thank you, Madam President.

(The Chair recognized Sen. Gatsas to speak.)

SENATOR GATSAS: Thank you, Madam President. I want to thank the Committee for working on this bill and bringing it forward. Certainly, when I was in the room hearing testimony that there was not a gang problem in Manchester, kind of frizzled the hair on the back of my neck and I was astonished. Because for somebody that may be in Manchester, I understand that there is a gang problem, there's a serious gang problem. And I'm sure that there's a gang problem in Nashua. And I think that this bill will take care of that problem. Thank you, Madam President.

(The Chair recognized Sen. Gottesman to speak.)

SENATOR GOTTESMAN: Thank you, Madam President. In light of that last comment, I just have to say that I do not recall there being any testimony about the fact that there is no gang problem in Manchester or in

Nashua. But I do recall that the Committee struggled with this legislation to try to make it come out in a way that was the best product in light of what was given to us in the first instance. So, I hope that the Senate understands that we tried to move this along, knowing full well that there are problems in both Manchester, Nashua and other parts of the state. Thank you, Madam President.

(The Chair recognized Sen. Foster to speak.)

SENATOR FOSTER: Thank you, Madam President. I want to thank Sen. Gatsas for bringing this legislation forward. Certainly, in the City of Nashua the local law enforcement have indicated that there is a street-gang problem, and they feel that having this in place will give them a tool to hopefully cause it not to grow any further. I think the remarks from the two previous Senators – there was a witness who seemed to believe that there wasn't a criminal street-gang problem in Manchester. I don't think any member of the Committee took that, frankly, all that seriously. The individual usually provides us very useful advice, quite frankly, in looking at the legislation and had some good comments to the legislation, but I think at least most of us believe there is a need, because there is a criminal street-gang problem in our larger cities that we don't want to see grow any more. Thank you, Madam President.

(The Chair recognized Sen. D'Allesandro to speak.)

SENATOR D'ALLESANDRO: Thank you, Madam President. I'd just like to applaud the work of the Committee in putting together a workable piece of legislation. We recognize that there are problems, and these problems are manifesting themselves in our municipal areas as well as our rural areas, but particularly in our municipal areas. And the bill as amended I think does good work in quantifying the problem and addressing it. And I think that's important. All of these are difficult decisions, extremely difficult decisions. And we try to address the problem, I think in the best possible manner. The amendment does that, and again, I applaud the work of the Committee. The fact that this aberrant behavior is appearing in our country is a fact; I mean it's just a fact. And the fact that it's coming into our state is another fact. How we deal with it, again, is a responsibility of our local municipalities. But the piece as brought forth, as amended, is a good piece of legislation and makes sense. Thank you, Madam President.

(The Chair recognized Sen. Barnes to speak.)

SENATOR BARNES: Thank you, Madam President. You know, I want to thank Sen. Gatsas and the Committee for bringing this forward, because as we sit here and I look around this room, I think we all might have that problem and maybe not realize it in some of our towns. I have a couple of towns where it is a problem and they're small towns. So, I think all 24 of us in here should be very thankful for Sen. Gatsas bringing it forward and for the Committee to put it together so it's something that we can all vote on. Because I believe that probably every one of us, even our small towns, has a little bit of that going on, and this is going to help us all, in the long run. In my opinion. Thank you, Madam President.

(The Chair recognized Sen. Estabrook to speak.)

SENATOR ESTABROOK: Thank you, Madam President. I would join in agreement that this is a very serious issue and that Sen. Gatsas is right to bring it to our attention. And while I understand that this is one approach, I question whether this is the most effective approach

to the problem. It's a very serious problem. I don't know that we have been shown any evidence that increased penalties are really going to deter the behavior; we hope that they do. But I rise just simply to ask us to think further about this beyond this vote right now, and that if we're serious about trying to do something about this problem, that we take a look at what we might do in the area of prevention. Thank you, Madam President.

The question is on the adoption of Committee Amendment 0857s. Committee Amendment 0857s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 507-FN

A roll call was requested by Sen. Gatsas, seconded by Sen. Barnes.

The following Senators voted Yes: Gallus, Reynolds, Kenney, Sgambati, Cilley, Janeway, Odell, Roberge, Kelly, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, DeVries, Letourneau, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.

The following Senators voted No: None.

Yeas: 23 - Nays: 0

Motion of Ought to Pass as Amended adopted, bill Ordered to Third Reading.

SB 371, making various changes to the city of Manchester employees' contributory retirement system. Public and Municipal Affairs Committee. Ought to Pass, Vote 5-0. Senator DeVries for the committee.

SENATOR DEVRIES: Thank you, Madam President. I move that Senate Bill 371 ought to pass. The bill amends the Manchester Employees' Contributory Retirement System by making various updates to put it in line with current law. In committee testimony it was noted that this bill has been reviewed and approved by the Manchester Board of Mayor and Aldermen and that this legislation is essentially a five-point housekeeping measure. The Public and Municipal Affairs Committee asks for your support of Senate Bill 371. Thank you.

(The Chair recognized Sen. Barnes for a question of Sen. DeVries.)

SENATOR BARNES: Senator, could you let the chamber know what the vote on the aldermanic council was on that?

SENATOR DEVRIES: I believe we had two recusals, so that would be a 12-0 vote, I believe. I don't perfectly recall, but I think it was unanimous with the two abstentions.

SENATOR BARNES: Thank you very much.

(The Chair recognized Sen. D'Allesandro to speak.)

SENATOR D'ALLESANDRO: Thank you, Madam President. When we talk about retirement, I don't want my colleagues to think that this has any effect on the New Hampshire Retirement System, it doesn't. This is purely a perfunctory situation. Because of the way the Manchester Retirement System was established, every time there's a change it must first come to the Legislature for approval, then approval by the board of mayor and aldermen in order to get on a referendum, and then voted on by the people in the City of Manchester to see whether that referendum passes or not. That has been the will of the City of Manchester that this

process be maintained. So when you think about the retirement system, it has no effect on the New Hampshire Retirement System. It is a municipal retirement system. That privilege was granted to the City of Manchester in 1973, and every time we get one of these things there's some confusion about its effect on the state retirement system. It has no effect on the state retirement system. We do nothing but authorize it to go to the ballot by referendum in Manchester. Thank you, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on SB 371.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

Sen. Foster asserted Rule 42 on SB 371.

SB 381, relative to conservation commissions. Public and Municipal Affairs Committee. Ought to Pass with Amendment, Vote 3-1. Senator DeVries for the committee.

Public and Municipal Affairs

February 19, 2008

2008-0702s

03/10

Amendment to SB 381

Amend the bill by replacing all after the enacting clause with the following:

1 Appropriations Authorized; Contributions to Qualified Organizations. Amend RSA 36-A:5, I-II to read as follows:

I. A town or city, having established a conservation commission as authorized by RSA 36-A:2, may appropriate money as deemed necessary for the purpose of this chapter. The whole or any part of money so appropriated in any year and any gifts of money received pursuant to RSA 36-A:4 may be placed in a conservation fund and allowed to accumulate from year to year. Money may be expended from said fund by the conservation commission for the purposes of this chapter without further approval of the town meeting. ***Such expenditures may include contributions to "qualified organizations," as defined in section 170(h)(3) of the Internal Revenue Code of 1986, for the purchase of property interests to be held by the qualified organization, when such purchase carries out the purposes of this chapter. Such contributions may be made when protection of the specific property is consistent with the goals of the town master plan. Because such contributions further the protection of the state's natural resources, they are hereby declared to be a public purpose and to provide primarily a public benefit, even though benefits to private parties may incidentally result.***

II. The town treasurer, pursuant to RSA 41:29, shall have custody of all moneys in the conservation fund and shall pay out the same only upon order of the conservation commission. The disbursement of conservation funds shall be authorized by a majority of the conservation commission. Prior to the use of such funds for the purchase of any interest in real property ***by the conservation commission or any contribution to a qualified organization***, the conservation commission shall hold a public hearing with notice in accordance with RSA 675:7, ***and the local governing body shall approve the use of funds.***

2 Effective Date. This act shall take effect 60 days after its passage.

2008-0702s**AMENDED ANALYSIS**

This bill allows conservation commissions to contribute money from the conservation fund to certain qualified organizations for the purchase of property interests to be held by the organization when such purchase carries out the purposes for which conservation commissions are established.

SENATOR DEVRIES: Thank you, Madam President. I move that Senate Bill 381 ought to pass with amendment. This amended bill allows conservation commissions to contribute money from the conservation fund to certain qualified organizations for the purchase of property interests to be held by the organization when such purchase carries out the purposes for which conservation commissions are established. This addresses concerns that some towns have had regarding land conservation and clarifies their options. The Public and Municipal Affairs Committee asks for your support on the amended version of this bill. Thank you.

(The Chair recognized Sen. Barnes for a question of Sen. DeVries.)

SENATOR BARNES: Thank you, Senator.

SENATOR DEVRIES: Absolutely, Senator.

SENATOR BARNES: A town or a city takes a piece of conservation land and turns it over to, let's say, the conservation firm of Bear-Paw, which is pretty big out in the district where I live, and then all of a sudden the town realizes that it wants to build a fire station on that land five years down the road. Now, this is town property that the taxpayers of that town own, that we have turned into conservation and given it to Bear-Paw to oversee. Does the Town of Raymond, if it's our town, have to pay Bear-Paw to get our land back so we can build our fire station?

SENATOR DEVRIES: Senator, it's my understanding that conservation easements would be held in perpetuity. So I'm not sure that would be a question before, but I do note in the bill that there is a vote of the governing body prior to any activity. So this is enabling legislation, and I'm sure that would be discussed prior to that decision being made in Raymond. Because I know those selectmen always consider these facts.

SENATOR BARNES: Trust me, it has been discussed a great deal in Raymond.

SENATOR DEVRIES: Thank you.

SENATOR BARNES: Thank you, Senator.

**The question is on the adoption of Committee Amendment 0702s.
Committee Amendment 0702s adopted.**

The question is on the adoption of Ought to Pass as Amended on SB 381.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

Sen. Barnes is in opposition to SB 381.

SB 504-FN, restricting the number of puppies to be sold by commercial kennels. Public and Municipal Affairs Committee. Inexpedient to Legislate, Vote 5-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Madam President. I move Senate Bill 504 inexpedient to legislate. This bill restricts the number of puppies to be sold by commercial kennels. The overall intent of the bill is to protect the welfare of dogs, and while the Committee supports this aim, testimony revealed that it is not clear if this legislation helps reach that goal. The State Veterinarian is also in opposition to the bill. The Public and Municipal Affairs Committee respectfully asks for your vote of inexpedient to legislate. And I thank you ahead of time for your vote

The question is on the adoption of committee recommendation of Inexpedient to Legislate on SB 504-FN.

Motion of Inexpedient to Legislate adopted.

SB 508-FN-L, relative to municipal deposits. Public and Municipal Affairs Committee. Ought to Pass with Amendment, Vote 5-0. Senator Barnes for the committee.

Senate Public and Municipal Affairs

March 4, 2008

2008-0832s

08/04

Amendment to SB 508-FN-LOCAL

Amend the bill by replacing all after the enacting clause with the following:

1 Municipal Deposits. Amend RSA 41:29, VII to read as follows:

VII. The treasurer shall ensure that all moneys remitted shall be deposited at least on a weekly basis, or daily whenever funds remitted from all departments collectively totals \$500 or more. Such deposit function may be delegated pursuant to paragraph VI. However, failure to ensure that funds are being deposited on a timely basis as required by this paragraph shall be cause for immediate removal from office pursuant to RSA 41:26-d. ***In any municipality where there is no bank or other depository institution within the municipality or within 10 miles of that municipality, the treasurer shall make deposits consisting of funds remitted from all departments and collectively totaling \$1,500 or more on a weekly basis.***

2 Municipal Deposits; Banking Procedures. Amend RSA 41:9, VI to read as follows:

VI. The selectmen shall be responsible for establishing and maintaining appropriate internal control procedures to ensure the safeguarding of all town assets and properties ***except for those procedures relative to municipal deposits established in RSA 41:29, VII.***

3 Effective Date. This act shall take effect 60 days after its passage.

SENATOR BARNES: Thank you, Madam President. I move that Senate Bill 508 ought to pass with an amendment. This bill allows town treasurers to make certain deposits weekly. The amendment increases the minimum amount for a treasurer to make a weekly deposit and further clarifies responsibility for these deposits. At the public hearing it was noted that many towns would be helped by this legislation, especially those in more rural areas with limited resources. I believe it was Sen. Reynolds who brought this forward for one of her towns, and it makes sense for a lot of our small towns. The Public and Municipal Affairs Committee asks for your support of Senate Bill 508 with the amendment that we asked for. Thank you very much.

Recess/Out of Recess.

MOTION TO TABLE

Sen. D'Allesandro moved to have SB 508-FN-L laid on the table.

Motion adopted.

PRESIDENT LARSEN: And it is not coming under the rules – it is not going to Finance, correct?

SENATOR D'ALLESANDRO: Madam President, this piece of legislation has no financial impact on the State of New Hampshire. So, we'll keep it on the table.

PRESIDENT LARSEN: We'll put it on the table, it remains there.

LAID ON THE TABLE

SB 508-FN-L, relative to municipal deposits.

SB 308-FN-A, restoring certain foreign dividend deductions under the business profits tax and an exemption to the real estate transfer tax. Ways and Means Committee. Ought to Pass with Amendment, Vote 5-0. Senator Odell for the committee.

Senate Ways and Means

March 4, 2008

2008-0820s

09/01

Amendment to SB 308-FN-A

Amend the title of the bill by replacing it with the following:

AN ACT restoring certain foreign dividend deductions under the business profits tax.

Amend the bill by replacing all after section 1 with the following:

2 Applicability. Section 1 of this act shall apply to returns and taxes due on account of taxable periods ending after June 30, 2007.

3 Effective Date. This act shall take effect upon its passage.

2008-0820s

AMENDED ANALYSIS

This bill restores certain foreign dividend deductions under the business profits tax. The deductions were repealed in 2007.

SENATOR ODELL: Thank you, Madam President. I move Senate Bill 308-FN ought to pass with amendment. Last Session the Legislature passed House Bill 598 which had some unintended consequences. It gave the impression that we were eliminating a deduction for entities that already pay taxes in this state. This bill would essentially eliminate the possibility of double taxation on common ownership and management entities. Currently, when the entity pays the profit to the parent company within its group as a dividend, the dividends are treated as income to the parent company and it is included in the group's income a second time, which is double taxation. The amendment deletes the second section of the legislation which is unnecessary at this time. I will point out that this legislation has come forward from discussions that Sen. Foster and I had with the Commissioner of Revenue last fall that were not completely satisfactory. When we passed this legislation on Tuesday of this week out of the committee, Ways and Means Committee, it was interesting that the Department at the same time also put out a technical information release that contained a section on the repeal of the dividends-received deduction. So with this arcane discussion about

double taxation, I think it's good that this is going to Finance for additional work and, hopefully, cooperative effort with the Commissioner. Thank you, Madam President.

The question is on the adoption of Committee Amendment 0820s. Committee Amendment 0820s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 308-FN-A.

Motion of Ought to Pass as Amended adopted, bill ordered to the Committee on Finance (Rule 26).

SB 310-FN, relative to changes to games of chance. Ways and Means Committee. Ought to Pass with Amendment, Vote 5-0. Senator Downing for the committee.

Senate Ways and Means

March 4, 2008

2008-0839s

08/09

Amendment to SB 310-FN

Amend RSA 287-D:2-a, V(c) as inserted by section 1 of the bill by replacing it with the following:

(c) That neither the applicant nor any person who will be participating in the operation of the games of chance has, ***in any jurisdiction***, been convicted of a felony ***or a class A misdemeanor*** within the previous 10 years which has not been annulled by a court or a ***class B misdemeanor*** [~~involving falsehood or dishonesty~~] within the previous 5 years which has not been annulled by a court, or has ***ever*** violated any statutes or rules governing charitable gambling.

Amend the bill by replacing section 3 with the following:

3 Operation of Games of Chance. Amend RSA 287-D:2-b, III-VI to read as follows:

III. No one under the age of 18 years shall be admitted to the premises on which games of chance are being conducted, except when the games are being conducted at a carnival. Proof of age shall be produced upon request of the [~~lottery~~] ***pari-mutuel*** commission. When games of chance are conducted at a carnival, persons under the age of 18 years may be admitted to the premises on which the games are being conducted when accompanied and supervised by a parent or legal guardian; but persons under the age of 18 shall not be permitted to play games of chance at a carnival.

IV. No games of chance shall be conducted prior to 11:00 a.m. on a weekday ***or Saturday***, prior to noon on a Sunday, or after 1:00 a.m. on any day.

V. No person operating a game of chance and no person who has leased out a facility or sold or leased game of chance paraphernalia or related equipment to a charitable organization for use during games of chance shall participate or play in any game conducted at that location on that date.

VI. ***Subject to the provisions of RSA 287-D:8, II***, no person who has, ***in any jurisdiction***, been convicted of a felony or class A misdemeanor within the previous 10 years which has not been annulled by a court, [~~or a~~] class B misdemeanor within the past 5 years which has not been annulled by a court, or who has ***ever*** violated any of the statutes or rules governing charitable gambling in the past [~~in this or any other~~]

state] shall operate a game of chance licensed under this chapter, or rent, lease, sublease, or otherwise provide any hall or game of chance paraphernalia for the conduct of games of chance licensed under this chapter.

Amend the bill by replacing section 13 with the following:

13 Background and Criminal Records Check. Amend RSA 287-D:8, II-III to read as follows:

II. Upon receipt of an applicant's criminal record information, the pari-mutuel commission shall make a determination of eligibility for licensure ***and whether the applicant is fit to be associated with games of chance in New Hampshire.***

III. All applicants shall also be subject to a ***national criminal*** background check, ***including the submission of fingerprints to the Federal Bureau of Investigation for a criminal background check,*** by the pari-mutuel commission to determine if they are eligible for licensure under this chapter.

Amend the bill by replacing all after section 14 with the following:

15 New Paragraph; Game Operator; Definition. Amend RSA 287-D:1 by inserting after paragraph IV the following new paragraph:

V. "Game operator" means:

(a) "Primary game operator" which means any consultant or any person other than a bona fide member of the charitable organization, involved in conducting, managing, supervising, directing, or running the games of chance; or

(b) "Secondary game operator" which means any person other than a bona fide member of the charitable organization, involved in dealing, running a roulette wheel, or handling chips.

16 License Fees and Specifications. Amend RSA 287-D:2-d, III to read as follows:

III. An applicant for a game operator license under RSA 287-D:2-c shall apply to the pari-mutuel commission, and upon payment of a fee [~~of \$500 per year~~] ***established by the pari-mutuel commission in rules adopted pursuant to RSA 541-A*** and if the applicant meets all other requirements of this chapter, a license shall be issued. Only one license shall be issued to each applicant per year. A license issued under RSA 287-D:2-c shall expire on December 31. The pari-mutuel commission shall notify the attorney general and police chief of any city or town where games of chance are held of any applications approved. RSA 7:28-c shall not apply to game operator licensees subject to this chapter.

17 New Paragraph; Rulemaking; Game Operator Fees. Amend RSA 287-D:1-b by inserting after paragraph XIII the following new paragraph:

XIV. Game operator fees pursuant to RSA 287-D:2-d, III.

18 Pari-Mutuel Commission; Position Established. The following position is hereby established in the pari-mutuel commission and shall be funded from fees collected pursuant to RSA 287-D:2-d, III:

One internal auditor III, labor grade 23.

19 Repeal. The following are repealed:

I. RSA 287-D:2-b, XIII, relative to submission of information to the pari-mutuel commission.

II. RSA 287-D:2-d, IV, relative to authorization of specific games.

III. RSA 284:23, V, relative to tax rates for Rockingham Park.

20 Effective Date. This act shall take effect 60 days after its passage.

2008-0839s**AMENDED ANALYSIS**

This bill:

I. Makes certain changes to the application and licensing process for game operators.

II. Allows pari-mutuel officials to inspect games of chance equipment.

III. Creates new penalties for deviations from the pari-mutuel commission's requirements.

IV. Establishes the positions of internal auditor III in the pari-mutuel commission.

SENATOR DOWNING: Thank you, Madam President. I move Senate Bill 310-FN ought to pass with amendment. This bill gives the Pari-Mutuel Commission the tools to regulate games of chance and to protect the charities that are involved. In 2006 the Pari-Mutuel Commission was given the responsibility to enforce the games of chance; yet they were never given the staff to help license the 360 charities. The committee amendment deletes one of the positions in the original legislation and makes the one standing staff position self-funded. The committee amendment also allows the Pari-Mutuel Commission to make the ultimate decision not to allow an applicant to participate as a game operator if they have been convicted of a felony or a Class A misdemeanor within the previous ten years, or a Class B misdemeanor within the last five years. This bill will help to clarify the statutes that will allow the Pari-Mutuel Commission to do the job that was intended. Please join the Ways and Means Committee in voting this bill ought to pass with amendment. Thank you.

(The Chair recognized Sen. Gatsas for a question of Sen. Downing.)

SENATOR GATSAS: Senator, I notice that there's a repeal relative to a tax rate for Rockingham Park?

SENATOR DOWNING: Yes, that's part of the bill in the end. And right now they don't have to pay a tax, and they want that repealed so they can pay the tax.

SENATOR GATSAS: So that means it's revenue to the State of New Hampshire.

SENATOR DOWNING: Yes, it will be.

SENATOR GATSAS: Thank you.

The question is on the adoption of Committee Amendment 0839s. Committee Amendment 0839s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 310-FN.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 333-FN-A-L, establishing an exemption from the real estate transfer tax. Ways and Means Committee. Interim Study, Vote 5-0. Senator Reynolds for the committee.

SENATOR REYNOLDS: Thank you, Madam President. I move SB 333-FN refer to interim study. This bill establishes an exemption from RSA 78-B,

the Real Estate Transfer Tax, for transfers to a corporation, limited liability company, general partnership, or a limited liability partnership, provided that the shareholders' members are – partners are comprised solely and identical to the original grantors. Currently the Department of Revenue considers all transfers of real estate taxable even if no monetary value exchanges hands. And this has happened to families where they've bought a large tract of land, created an LLC to take title to the property, and then want to give a piece of property to a family member and find out that they have to pay the full transfer tax. So this is really an issue of fairness. This bill was at the request of one of my constituents who's a long-standing member of the real-estate bar. We also heard from other real-estate attorneys, New Hampshire Timber Association. We think this bill is very important, and we want to work with the Commissioner of Revenue Administration to get it right, but it does need some additional time. I certainly will pursue the study committee, and we'd ask your support to send this legislation to interim study. Thank you, Madam President.

The question is on the adoption of Committee Recommendation of Refer to Interim Study on SB 333-FN-A-L.

Motion of Refer to Interim Study adopted.

SB 515-FN-A, relative to relief from business taxes for self-employed business owners returning from active duty deployment in the armed forces. Ways and Means Committee. Ought to Pass with Amendment, Vote 4-0. Senator Downing for the committee.

Senate Ways and Means
March 4, 2008
2008-0817s
04/09

Amendment to SB 515-FN-A

Amend the title of the bill by replacing it with the following:

AN ACT relative to the combat veteran business tax credit.

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraph; Combat Veteran Business Tax Credit. Amend RSA 77-A:5 by inserting after paragraph XIII the following new paragraph:

XIV. The unused portion of any combat veteran business tax credit awarded by the commissioner under RSA 77-E:3-c shall be available to apply to the business profits tax.

2 New Section; Business Enterprise Tax; Combat Veteran Business Tax Credit. Amend RSA 77-E by inserting after section 3-b the following new section:

77-E:3-c Combat Veteran Business Tax Credit.

I. There shall be tax credit of \$1,000 per tax period for each owner or operator of a business enterprise, who:

(a) Is serving in the National Guard or reserve or is a veteran of the National Guard or reserve;

(b) Served a tour of duty in a qualifying duty location; and

(c) Applies for such credit on a form with supporting documentation as designated and determined by the commissioner.

II. Tax credits under this section shall be granted for no more than 2 consecutive tax periods that immediately follow the tax period in which owner or operator is returns from a qualifying duty location.

III. The cumulative total of all tax credits under this section shall not exceed \$2,000.

IV. Unused portions of this credit shall apply to the business profits tax as provided by RSA 77-A:5, XIV. Any unused portion of the credit after application to the business profits tax shall lapse.

V. For the purpose of this section, a "qualifying duty location" means:

(a) A hazardous duty area, as recognized by the Internal Revenue Service; or

(b) A combat zone, as designated by Presidential Executive Order.

3 Effective Date. This act shall take effect upon its passage.

2008-0817s

AMENDED ANALYSIS

This bill establishes a combat veteran business tax credit against the business enterprise tax and allows any unused portion of the credit to be applied to the business profits tax.

SENATOR DOWNING: Thank you, Madam President. I move Senate Bill 515-FN ought to pass with amendment. This bill allows self-employed proprietors returning from active deployment to deduct their BET and BPT taxes. Unfortunately, the Commissioner of Revenue informed the Committee that the New Hampshire Constitution allows us to classify income and not taxpayers, which would make this piece of legislation unconstitutional. The committee amendment clears up that issue and allows a credit instead of a deduction of the proprietor's business taxes. Please join the Ways and Means Committee in voting this bill ought to pass with amendment. Thank you.

The question is on the adoption of Committee Amendment 0817s.

Committee Amendment 0817s adopted.

The question is on the adoption of Ought to Pass as Amended on Senate Bill 515-FN-A.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

RESOLUTION

Sen. Foster moved that the Senate now adjourn from the Early Session, that the business of the Late Session be in order at the present time; that all bills and resolutions ordered to Third Reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

Motion to adjourn adopted.

Adjournment from the Early Session.

LATE SESSION

Third Reading and Final Passage

SB 301-FN, requiring insurers to cover prescriptions for durable medical equipment filled near the patient's residence.

SB 310-FN, relative to changes to games of chance.

SB 335, allowing certain judges to terminate membership in the judicial retirement plan and elect senior active status.

SB 356-FN, prohibiting offenders against children from participating in or being a spectator at certain activities or events.

SB 371, making various changes to the city of Manchester employees' contributory retirement system.

SB 376, requiring local fire chiefs to annually inspect all school buildings within his or her jurisdiction and report on the condition of all such school buildings.

SB 381, relative to conservation commissions.

SB 409, relative to conservation and preservation restrictions.

SB 440, relative to requiring occupational boards and commissions to include relevant military experience or training in satisfying requirements for engaging in a regulated profession.

SB 475, relative to the definition of advance fees in the real estate practice act.

SB 501-FN, relative to a workers' compensation exclusion and penalty collection powers of the department of labor.

SB 507-FN, relative to extended terms of imprisonment for criminal street gang members.

SB 515-FN-A, relative to the combat veteran business tax credit.

SB 519-FN, imposing a per diem fine on dam owners and operators for failure to repair damage.

SB 522-FN, relative to licensing requirements for small quantity biodiesel producers and distributors and prohibiting the sale or delivery of biodiesel not meeting the state ASTM standard.

SB 526, relative to the death benefit for police officers and firefighters killed in the line of duty.

ANNOUNCEMENTS

SENATOR D'ALLESANDRO: Madam President, I'm waiving Senate Bill 540-FN from Finance. This is relative to the standard wellness plan for small employees. We don't need it to come to Finance, there's no financial impact, so we're waiving Finance on it.

SENATOR ESTABROOK (Rule 44): Thank you, Madam President. On behalf of the Governor, I would like to read for our record a proclamation issued regarding American Red Cross Month, March 2008: "WHEREAS, New Hampshire has always been a place of humanitarian action and compassion, a place where people take care of each other and are always willing to reach out and take care of others in need, whether they are down the block or around the globe; and WHEREAS, the Red Cross in New Hampshire has always been a place where citizens join together and the generosity and compassion of New Hampshire people finds purpose; and WHEREAS, the Red Cross of New Hampshire responds swiftly and generously and in overwhelming numbers during times of need; and WHEREAS, the Red Cross of New Hampshire responds to hundreds of disasters each year; and WHEREAS, the Red Cross of New Hampshire and its volunteers are among the first on the scene of disasters, providing

food, shelter, grief counseling and more; and WHEREAS, the residents of New Hampshire turn to the six local Red Cross Chapters for many of the things that makes this state stronger and safer; and WHEREAS, nearly all of our critical blood supply is selected by the Red Cross of New Hampshire; and WHEREAS, last year thousands of our residents chose the Red Cross of New Hampshire as the place to donate the Gift of Life, and thousands more residents also turned to the Red Cross to learn life-saving skills such as First Aid and CPR; and WHEREAS, the Red Cross of New Hampshire continues to provide support and comfort to our military families; and WHEREAS, in celebrating American Red Cross Month we are celebrating the humanitarian and volunteer spirit here in New Hampshire and all across America. Now, THEREFORE, I, John Lynch, Governor of the State of New Hampshire, do hereby PROCLAIM March 2008 as American Red Cross Month and urge all citizens to continue to give blood, volunteer their time, and give generously to the American Red Cross and its local offices." Thank you, Madam President.

SENATOR LETOURNEAU (Rule 44): Thank you, Madam President. I just wanted to rise and say a few words about a friend and a colleague from the House that passed away that we attended the services this morning. Many of us here had served in the House with Michael Whalley and found him to be a friend and a colleague and a professional. And I wanted to share a small story. As well as working with him in the House, he had a business that many of my constituents were interested in, doing business with power sports. And as kind of a cute story, a friend of mine was looking for a trailer for his snowmobiles, and I suggested he go up and see Mike Whalley or his brother and investigate buying a snowmobile trailer and I'm sure he would give him a favorable price. And I spoke to Mike about it, he says, "Oh yeah, send him right along." The gentleman got up there and he looked at the trailer and talked to the staff on the floor, and the staff person gave him a price that was stuck on the sticker. And he said, "Gee, can you do any better?" And he says, "No, not at all." So he went out in the parking lot and called me on the cell phone, and I went over and spoke to Mike, his staff person is not dealing with him very well. And I told him – I called him back, I says, "Well, stick around the showroom for a little while, you might hear a different story." And it was kind of funny the way he made the comment, 'cause he called me the other day; he says, "Is this the same 'Mike Whalley' that I was dealing with?" I says, "Absolutely." While he was sitting there in one of the chairs in the showroom a guy come over and he says, "I just got the Whalley call." "I just got the Whalley call, come over here, we'll make a better deal for you." And that's the kind of guy that Mike was; he would look out for everybody, always try to help everybody out. Every time I went over there, as everybody here knows, I ride a Harley-Davidson, and Mike didn't sell Harley-Davidsons, he sold a different brand of motorcycles, and he would always drag me over to one of these bikes and says, "Look at that, isn't that a great piece of machinery." And I'd say, "Yeah, it's a great piece of machinery, but it's not a Harley." So we'd always have that little thing going. And it's just the innuendos of having friends from this building here where we experience each other's pain and suffering as well as the good times and bad times. So, listening to some of the stories this morning in the church, I could relate to those stories with Mike, having served eight years with him in the House. And I just wanted to not let his passing go without putting a few words out there. Thank you very much.

RESOLUTION

Sen. Foster moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, referring bills to committee, scheduling hearings, sending and receiving messages, and processing enrolled bill reports and amendments.

Motion to recess adopted.

The Senate is in recess to the Call of the Chair.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bills sent down from the Senate:

SB 146-FN, relative to allowing service credit for certain court system employment.

REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bill(s):

SB 146-FN, relative to allowing service credit for certain court system employment.

Sen. D'Allesandro moved adoption of Report of Committee on Enrolled Bills.

Committee Report adopted.

INTRODUCTION OF SENATE BILL(S)

Senator Foster offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, Senate legislation numbered from **SB 542 - SCR 11** shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

Resolution adopted.

First and Second Reading and Referral

08-2918

SB 542, relative to a mediated settlement dispute in the town of Rye. (Fuller Clark, Dist 24; Grote, Rock 18; Borden, Rock 18: Public and Municipal Affairs)

08-2925

SB 543, establishing a commission to study court security. (D'Allesandro, Dist 20; Clegg, Dist 14: Finance)

08-2900

SCR 11, supporting the application of Taiwan for observer status at the World Health Organization. (Sen. Foster, Dist 13; Rep. Foster, Hills 4; Rep. Rosenwald, Hills 22: Health and Human Services)

Out of Recess.

LATE SESSION

Sen. Foster moved that the Senate adjourn from the Late Session.

Motion to adjourn adopted.

Adjournment from the Late Session.

JOURNAL
OF THE
SENATE

SESSION
OF

2008

March 13, 2008

The Senate reconvened at 11:00 a.m., a quorum being present.

The Reverend Canon Timothy Rich, chaplain to the Senate, offered the following remarks and prayer:

In my house it's nearly time to get our taxes in, which prompted my wife to say to me the other day: "Listen, I know you hate talking about finances and love to put off doing our taxes until the very last minute, but could we just once not file for an extension." After reading the recent Pew Center opinions regarding governmental efficiency, it seems I might have something in common with New Hampshire's governmental practices. Now, it stings a bit to hear such opinions and yet the challenge in responding is to consider the comments not as a personal attack but an invitation to reflect upon the status quo. Whether considering governmental efficiency or economic development or workforce housing or gambling, the challenge is to translate personal character into good and just civic practices. William Sloan Coffin once said, "Public good doesn't automatically follow from private virtue. A person's moral character, sterling though it may be, is insufficient to serve the cause of justice, a cause which is to challenge the status quo and to try to make what's legal more moral." Let us pray:

O loving God, we know that You look upon Your creation with patient eyes, asking not for perfection but rather reflection. Help all who labor so faithfully in this chamber and in this building to be open not only to new policies but new practices. Continue to nurture within them a respect for one another and a commitment to the common good so that together they might help the people of this state to enjoy the comforts of a home and the opportunities of an economy, all of which flow from the abundance of Your blessings. In your gracious name, we pray. Amen

Sen. Roberge led the Pledge of Allegiance.

INTRODUCTION OF GUESTS AND PRESENTATIONS

Skip and Rhonda Rollins, Newport, parents of Specialist Justin A. Rollins (SB 506.)

Gretchen Hyslip, Holderness School student.

Don Lincoln, Westmoreland constituent.

Jenna Labadie and children (Sarah and Tucker), Sullivan constituents.

Exeter High School "Blue Hawks" Football Team and coaches, 2007 Div. II state champions.

Exeter High School Girls Soccer Team and coach, 2007 Class L state champions.

Dover Red Hat "Sassy Lassies."

Patricia Mellor and Mary Ellen Hettinger, Girl Scouts, Swift Water Council.

Senator Reynolds' Family: Husband Mike Conklin and son Michael.

Senate Page: Brian Gendreau, Pinkerton Academy.

Senate Page: Robert Welch, Pinkerton Academy

The motion was made by Sen. Burling, seconded by Sen. Barnes, that jackets may be removed for today's session; motion unanimously accepted.

PRESIDENT LARSEN: I'd like to take this moment to recognize this week – well, the week of March 9 through the 15th as Girl Scout Week. It is also the 50th anniversary of Girl Scouts of Swift Water Council. As a

former Brownie Leader and Cub Scout Leader, it's wonderful to recognize our Chief Executive Officer from the Swift Water Girl Scouts, Patricia Mellor and Marilyn [sic] Hettinger. And I wanted to present this Resolution. (Resolution presented.)

(The Chair recognized Sen. D'Allesandro to speak.)

SENATOR D'ALLESANDRO: Thank you, Madam President. The following bills will come – on the Calendar, will come to Finance: Senate Bill 343, Senate Bill 539, Senate Bill 307, Senate Bill 516. The following bills will not come to Finance: Senate Bill 500, Senate Bill 337, Senate Bill 536, Senate Bill 342, Senate Bill 503 and Senate Bill 518. Thank you.

COMMITTEE REPORTS

SPECIAL ORDER

President Larsen moved, without objection, that SB 506 would be taken out of the Public and Municipal Affairs Committee and Special-Ordered to the front of the Senate Calendar.

SB 506, naming the Elm Street bridge in Newport after Specialist Justin A. Rollins. Public and Municipal Affairs Committee. Ought to Pass, Vote 3-0. Senator Hassan for the committee.

SENATOR HASSAN: Thank you, Madam President. I move that Senate Bill 506 ought to pass. This bill names the Elm Street Bridge in Newport in honor of Specialist Justin A. Rollins who was killed in Iraq. The Committee heard moving testimony regarding Specialist Rollins' close relationship with his hometown and his excellent work in the armed services. Naming the Elm Street Bridge after him is a wonderful tribute that honors his brave service to our country and his love of Newport, New Hampshire. The Public and Municipal Affairs Committee requests your support for Senate Bill 506. Thank you.

(The Chair recognized Sen. Odell to speak.)

SENATOR ODELL: Thank you, Madam President. It was a year ago that I rose at this same place to speak of the death of Justin Rollins who was killed on the 5th of March, in Iraq, along with five of his colleagues. He came back to Newport, and on a cold and blustery night hundreds of people from the Town of Newport stood in line to pay their respects to Skip and Rhonda and their family. Justin was truly a boy from Newport. But it was in the military that he found his stature and his bearings, and his maturity, and in a sense, his opportunity. He was in the 82nd Division, 82nd Airborne Division. He had a choice, and that was he didn't have to go to Iraq, but he wanted to go with his friends, his colleagues, and he did go. He gave up being a recruiter in northern New Jersey. He came back, and on the 17th of March there was a funeral in Newport. You and I were represented by Governor Lynch and Sen. Gregg, in a church on South Main Street. The Congregational Church was packed with honor guards in front. As he had requested of his father, that if he didn't – if he was killed, that he would rest at Arlington National Cemetery. So on the 19th of March of last year he was laid to rest at Arlington National Cemetery.

With a war that has separated us on policy and how it's financed and how it's managed, we are brought together as a country, and in our small towns and villages, and in our cities, by the sacrifice and service of young men and young women like Justin. He truly brought the community of Newport, his hometown, together. This bridge is known today as the "Elm Street Bridge." It's on one of the main arteries that leads between Newport and surrounding communities, in this case,

to our sister community of Claremont. It's in the heart of Newport. And very importantly this bridge is next to a memorial for others who have fallen in service to our nation. So your vote today is appropriate in taking that bridge, with the agreement of the Department of Transportation, with the support of the Board of Selectmen of Newport and the military organizations of Newport, that we pass this bill and name that bridge in memory and in recognition of sacrifice of Justin Rollins. This is one of those times where, when we think back to these walls that have heard speeches like this going back to 1819, when we recognize and think about those who have served us, that we carry on a great tradition of never forgetting those who have made the ultimate sacrifice. We always must remember. So colleagues, I thank you for your vote today. We'll circulate the tally sheet and have you sign it, and we'll present it to Skip and Rhonda at the conclusion of our vote. Thank you very much.

The question is on the adoption of committee recommendation of Ought to Pass on SB 506.

A roll call was requested by Sen. Odell, seconded by Sen. Barnes.

The following Senators voted Yes: Gallus, Reynolds, Kenney, Sgambati, Burling, Cilley, Janeway, Odell, Roberge, Kelly, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, DeVries, Letourneau, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.

The following Senators voted No: None.

Yeas: 24 - Nays: 0

Motion of Ought to Pass adopted, bill ordered to Third Reading.

MOTION OF RECONSIDERATION

Sen. Hassan, having voted with the prevailing side, moved reconsideration of SB 501-FN, the bill having been previously ordered to Third Reading and Final Passage.

(The Chair recognized Sen. Hassan to speak to her motion.)

SENATOR HASSAN: We passed Senate Bill 501-FN with a floor amendment – a committee amendment, and then a floor amendment last week. There was an error on the floor amendment that concerned the numbering and text of the bill. So if we agree to reconsider this bill, I can offer a new floor amendment that will take care of those errors.

The question is on the motion of Reconsideration on SB 501-FN.

Motion of reconsideration adopted.

SB 501-FN, relative to a workers' compensation exclusion and penalty collection powers of the department of labor.

Sen. Hassan offered a floor amendment.

Sen. Hassan, Dist. 23

March 10, 2008

2008-0935s

09/03

Floor Amendment to SB 501-FN

Amend the title of the bill by replacing it with the following:

AN ACT relative to workers' compensation on certain state projects and penalty collection powers of the department of labor.

Amend the bill by replacing all after the enacting clause with the following:

1 State Transportation Projects; Workers' Compensation. Amend RSA 228:4-b, I-III to read as follows:

I. Prior to any work being done by an individual contractor on any state transportation project carried out under this subdivision, such contractor, including all subcontractors and independent contractors, working on a highway, bridge, or other construction, reconstruction, alteration, or maintenance project, excluding routine maintenance operations conducted utilizing the contract rental agreement process, [funded] **and excluding deliveries to a project, administered** by the department shall provide to the commissioner of transportation:

(a) A certificate of insurance of his or her current workers' compensation coverage in New Hampshire for the classification of work to be completed on the project;

(b) A sworn statement that this coverage shall remain in effect for the duration of his or her anticipated work on the project;

(c) A completed work certificate, provided pursuant to RSA 281-A:4-b, that shall include the total number of employees anticipated to be employed by such contractor, subcontractor, or independent contractor on the project during the contract period, delineated by the National Council on Compensation Insurance (NCCI) classification code applicable to the scope of work to be performed;

(d) A copy of the contractor's compliance with a current written safety program, if applicable, as filed with the commissioner of labor under RSA 281-A:64, II and proof of an existing joint loss management committee as required under RSA 281-A:64, III, if applicable; and

(e) ~~[Any other information the commissioner of transportation deems necessary]~~ **The department may develop procedures to obtain the requirements in this section on an annual basis or by a prequalification procedure rather than on a project-by-project basis.**

II. If any highway, bridge, or other construction contractor, subcontractor, or independent contractor who might otherwise claim an exclusion under RSA 281-A:18-a is directly performing the work on a project covered under this section, such contractor, subcontractor, or independent contractor shall comply with the provisions of this section.

III. The commissioner of labor may assess any contractor, subcontractor, or independent contractor who falsifies information or fails to comply with this section a civil penalty of up to \$2,500 and in addition, such an employer shall be assessed a civil penalty of up to \$100 per employee per day of noncompliance. Notwithstanding any other provision of law to the contrary, any person with control or responsibility over the decisions to disburse funds and salaries and who knowingly falsified information or **knowingly** failed to comply with this section shall be held personally liable for the payment of penalties under this section and such contractor, subcontractor, or independent contractor shall not be allowed to bid or work on state projects for up to 5 years. The state shall be entitled to recover from the violator all costs and fees directly associated with uncovering falsified information supplied under this section.

2 Major Projects; Workers' Compensation. Amend RSA 21-I:80, VI(a) (5) to read as follows:

(5) ~~[Any other information the commissioner of administrative services deems necessary]~~ **The department may develop procedures to obtain the requirements in this section on an annual basis or by a prequalification procedure rather than on a project-by-project basis.**

3 Major Projects; Workers' Compensation. Amend RSA 21-I:80, VI(c) to read as follows:

(c) The commissioner of labor may assess any contractor, subcontractor, or independent contractor who falsifies information or fails to comply with this section a civil penalty of up to \$2,500 and in addition, such an employer shall be assessed a civil penalty of up to \$100 per employee per day of noncompliance. Notwithstanding any other provision of law to the contrary, any person with control or responsibility over the decisions to disburse funds and salaries and who knowingly falsified information or **knowingly** failed to comply with this section shall be held personally liable for the payment of penalties under this section and such contractor, subcontractor, or independent contractor shall not be allowed to bid or work on state projects for up to 5 years. The state shall be entitled to recover from the violator all costs and fees directly associated with uncovering falsified information supplied under this section.

4 New Section; Department of Labor; Penalty Collection Powers. Amend RSA 281-A by inserting after section 57 the following new section:

281-A:57-a Penalty Collection Powers.

I. Notwithstanding the provisions of any other law, with respect to the collection of any fees, penalties, or interest administered by the department, the department of labor shall cause a certified copy of the notice and demand for payment of such fees, penalties, or interest to be filed in accordance with RSA 454-B:2 and such filing and service of the notice and demand shall constitute a lien upon the real estate, personal estate, property interest, right, or credit to which the notice and demand relates, or which may be subsequently discovered.

II. If the party liable for such fees, penalties, or interest neither resides in nor owns property in this state, then the notice and demand in paragraph I of this section shall be filed with the secretary of state and shall constitute a lien in the manner as provided in paragraph I.

III. Any lien filed pursuant to this section shall continue and shall be valid and binding until the liability for the sum, with interest, costs, and attorney's fees is satisfied or 6 years from the date such lien is filed, whichever is earlier.

IV. In the event the liability, interest, costs, and attorney's fees are not satisfied before the end of the original term of the lien, any lien filed pursuant to this section may be renewed for the same term as the original term of the lien by refiled according to the procedures set forth in paragraphs I-III.

V. A bankruptcy filing shall not affect the validity of any lien properly filed or renewed in accordance with this section.

VI. Upon neglect or refusal of any person or corporation to pay the fees, penalties, or interest assessed upon them, the department may distrain the personal estate, property interest, right, or credit of such person or corporation.

5 Effective Date. This act shall take effect upon its passage.

2008-0935s

AMENDED ANALYSIS

This bill clarifies certain workers' compensation procedures relating to state projects.

The bill also provides the department of labor with the same penalty collection powers as the department of revenue administration.

SENATOR HASSAN: Madam President, I have a floor amendment on Senate Bill 501, which I hope will be passed out as I am speaking to it. And as I said, this is a bill that contained a number of corrections to the bill we passed concerning workers' compensation requirements on state building projects. And I would recommend passage of this floor amendment, to correct a numbering issue that came up with the last floor amendment last week. Thank you.

The question is on the adoption of Floor Amendment 0935s.

Floor Amendment 0935s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 501-FN.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 338, relative to the Hampton Beach capital improvement fund. Capital Budget Committee. Ought to Pass, Vote 4-1. Senator Hassan for the committee.

SENATOR HASSAN: Thank you, Madam President. I move Senate Bill 338 ought to pass. This bill was a request of the Division of Parks and Recreation. The bill will require the State Treasurer to transfer \$250,000 to the Hampton Beach Capital Improvement Fund no later than March 31st of each fiscal year. The Division requested this change in the current formula in order to properly manage their responsibilities at Hampton Beach, and specifically to ensure that there are sufficient funds to make payments on the bond for rebuilding and repair of the Hampton Seawall, something we bonded in last year's Capital Budget. Under the existing formula, the Hampton Beach Capital Improvement Fund is averaging about \$200,000 per year, and the transfer takes place at the end of the fiscal year. The Capital Budget Committee recommends that this legislation be adopted and asks your support. Thank you.

(The Chair recognized Sen. Gatsas to speak.)

SENATOR GATSAS: Thank you, Madam President. I rise in opposition to the bill. There was discussion that the hourly rate for the meters would increase by 25 cents an hour. It's always been the understanding that the first million twenty-five would come out, and would go to the park fund and also paying for expenses. If you look at the testimony that was given, there are two bonds that are in place that need to be paid, and those total \$370,000. I'm not quite sure how two-fifty is going to take care of bonds that cost \$370,000. I think it was clear that the Representative that is from that district was in, and said she was opposed to the funding scheme. I think that funding scheme was attempted to put into a bill that was probably six years ago, maybe seven, that would have taken two-fifty and directly funded it. The last two years that fund has produced an excess of \$200,000 for Hampton Beach and their fund. There are problems there. It's a big tourist attraction. I know that we bonded \$2 million to move forward on the wall. The Seashell is in vital disrepair. There are going to be pieces that overlap that people walk under and possibly debris could be hitting them. I think that it would be imperative, that other than just increasing the park fund, and I don't know, maybe that subsidy for Cannon Mountain, the only ski area in New Hampshire that possibly could be losing money in this year. So if it's for a subsidy of Cannon Mountain, maybe that's not something that

we should continue. Certainly the park fund needs to have an infusion, but it's sad to think that the people that are going to Hampton Beach, the tourists that we have there, that we don't take some of that money and make some of the appropriate changes that need to be effective there. So I look at this and say I'm not too sure that just applying it because the Department comes in and says we should cap it, so more money can go into the park fund. That's exactly what happens here. We cap the amount of money that goes to Hampton, and the additional funding goes into the park fund. Thank you, Madam President.

(The Chair recognized Sen. Fuller Clark to speak.)

SENATOR FULLER CLARK: Thank you very much, Madam President. I'd like to thank the Committee for moving this legislation forward. I'd like to point out that no one spoke in opposition to this bill, that Rep. Styles was there asking some questions. And as I understand it, the reason to do this is because it's not the money from the Hampton Beach Improvement Fund that can be used for the types of investments that Sen. Gatsas was talking about, the improvement of the shell, the improvement of the surrounding facilities. They are part of the park. The money in the Hampton Beach Capital Improvement Fund can only be used for parking improvements. And as we begin to see more money coming in than is needed for just the parking improvements, we wanted to make sure that the monies were there to cover the cost that's needed to pay off the interest on the bond, because the improvement of the seawall is part of the parking complex. But we also wanted to make sure that as we're looking at, you know, a 10 million, 15 million dollar – potentially \$18 million project, to rehabilitate the shell, which has had no money put into it for 40 years, to address the surrounding amenities and facilities that are needed to be used by the people who come to Hampton Beach – those are the bathrooms, those are the snack facilities, other types of facilities; they have hired a consultant who has prepared a plan of what needs to be done. It is currently being presented to the residents in Hampton and the residents in Hampton Beach. And ultimately that plan will come back to the Legislature to be looked at as well. And we wanted to make sure that there were going to be adequate dollars in the right pot to advance that project forward. And if all of the excess monies have to remain in the Hampton Beach Capital Improvement Fund, they can't be used for the types of improvements that Sen. Gatsas was talking about, and that we all agree, are needed. Because Hampton Beach and the park associated with that is one of the prime generators for money for all the parks. And the longer we delay making the necessary improvements and investments, the less likely we're going to be able to continue to generate the revenues through the visitors to sustain not only that park, but the other parks in the state. Thank you.

The question is on the committee recommendation of Ought to Pass on SB 338.

Motion of Ought to Pass adopted; bill ordered to Third Reading.

Sen. Gatsas is in opposition to SB 338.

SB 531, relative to the capital appropriation for the Hillsborough north superior court. Capital Budget Committee. Ought to Pass with Amendment, Vote 5-0. Senator Hassan for the committee.

Capital Budget
March 10, 2008
2008-0951s
10/09

Amendment to SB 531

Amend the title of the bill by replacing it with the following:

AN ACT relative to the capital appropriation for the Hillsborough north superior court and relative to the venue for criminal cases in Hillsborough county.

Amend the bill by replacing all after the enacting clause with the following:

1 Capital Budget; 2007; Administrative Services; Bureau of Court Facilities; Hillsborough North Superior Court. Amend 2007, 264:1, II, A, 1 to read as follows:

1. Hillsborough County North - Asbestos Abatement
and Related Construction,
Renovation, or Relocation

\$2,000,000

2 New Paragraph; Venue for Criminal Cases; Northern Judicial District of Hillsborough County. Amend RSA 496:1 by inserting after paragraph II the following new paragraph:

III. For offenses committed on or after the effective date of this paragraph, in the northern judicial district of the county of Hillsborough, where the trial of which is scheduled at a time when the courthouse for the northern judicial district of the county of Hillsborough is closed for renovations, the judicial district for purposes of part 1, article 17 of the New Hampshire constitution shall be the entire county of Hillsborough.

3 Effective Date. This act shall take effect upon its passage.

2008-0951s

AMENDED ANALYSIS

This bill allows an additional purpose for the funds appropriated in the 2007 capital budget for the Hillsborough north superior court.

The bill also extends the venue for criminal cases where trials are scheduled at Hillsborough north superior court to the entire county of Hillsborough, when the Hillsborough north superior court is closed for renovations.

SENATOR HASSAN: Thank you, Madam President. I move that Senate Bill 531 ought to pass as amended. This bill addresses a need for greater flexibility with regard to the appropriation in last year's Capital Budget for asbestos abatement at the Hillsborough County-North Courthouse in Manchester. We have learned that the ventilation system at the courthouse will make the abatement more difficult than originally thought, and we may need to relocate employees as a result. This bill will provide the Judicial Branch with the flexibility they need to use the Capital Budget funds for costs associated with renovation, construction or relocation of the courthouse, including related fit-ups of new or temporary space used to house court activities while renovation occurs. The court system is currently considering the Manchester District Court as well as Hillsborough-South as possible locations that would absorb some of the Hillsborough-North Courthouse's docket during renovation. The committee amendment addresses a couple of other issues. First, it changed the language on line 4 of the original bill to provide the needed flexibility for use of the funds. The original wording of just "employee relocation" was too narrow.

The second issue that the committee amendment addresses is a constitutional venue one. Hillsborough County is divided into two judicial districts. The amendment combines them into one during the period in which the Hillsborough-North Courthouse is being renovated. This means that any offenses that are committed in the northern judicial district after this legislation takes effect can be tried in Hillsborough County-South, if the trial is scheduled at a time when the Hillsborough County-North is closed for renovations. The Committee heard testimony from Chief Justice John Broderick that he is supportive of the bill as amended. One remaining issue that Sen. Foster raised in committee is the fact that Hillsborough-North and Hillsborough-South venues have separate jury pools. Sen. Foster suggested that perhaps the House could take a look at this aspect and decide whether or not it is necessary to add language that specifically provides for northern cases to have a jury pool from the entire county while Hillsborough-North is closed for renovations. The Capital Budget Committee recommends that this legislation be adopted as amended and asks your support. Thank you.

**The question is on the adoption of Committee Amendment 0951s.
Committee Amendment 0951s adopted.**

The question is on the adoption of Ought to Pass as Amended on SB 531.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

(The Chair recognized Sen. Ned Gordon as a visitor in the gallery.)

SB 468, relative to the reinsurance pool. Commerce, Labor and Consumer Protection Committee. Ought to Pass with Amendment, Vote 5-0. Senator Gottesman for the committee.

**Sen. Hassan, Dist. 23
March 4, 2008
2008-0812s
01/09**

Amendment to SB 468

Amend the title of the bill by replacing it with the following:

AN ACT relative to the reinsurance pool and the New Hampshire vaccine association.

Amend the bill by replacing all after the enacting clause with the following:

1 Individual Health Insurance; Definitions. Amend RSA 404-G:2, V(d) to read as follows:

(d) Protected, in part, by a group excess loss insurance policy where the policy or certificate of coverage has been issued or delivered in New Hampshire ~~and where coverage has been purchased by a group health insurance plan subject to the Employee Retirement Income Security Act of 1974, Public Law No. 93-406 (ERISA)]~~.

2 Reinsurance Pool; Board of Directors. Amend RSA 420-K:2, II to read as follows:

II. On or before July 1, 2005, the commissioner shall give notice to all members of the pool of the time and place for the initial organizational meeting, which shall take place by July 15, 2005. The members shall select the initial board at the organizational meeting and such initial board shall be subject to approval by the commissioner. The members

shall elect each subsequent board at the annual meeting of members and each such subsequent board shall be subject to approval by the commissioner. The initial board and each subsequent board shall ~~consist of~~ **include** at least 5 and not more than 9 **directors who shall be** representatives of ~~members~~ **member companies**. There shall be no more than one board member on the initial board and each subsequent board representing any one member company. In determining voting rights at the organizational meeting and all subsequent meetings of members, each member shall be entitled to vote in person or by proxy. All such votes shall be proportional to the member's covered lives. To the extent possible, at least 2/3 of ~~members~~ **the member representatives** of each board shall be small employer health carriers. At least one member **representative** of each board shall be a small employer health carrier with less than \$100,000,000 in net small employer health insurance premium in this state. The commissioner, or designee, shall be an ex-officio voting member of the board. **The commissioner shall appoint 2 directors to the board representing small employers and one director representing producers who sell health insurance to New Hampshire small employers. These appointments shall be made for a one-year term.** In approving selection of each board, the commissioner shall assure that all members are fairly represented.

3 Reinsurance Pool; Facultative Reinsurance Program. Amend the section heading and the introductory paragraph of RSA 420-K:5 to read as follows:

420-K:5 ~~[Eligibility, Coverage, and Rates]~~ **Facultative Reinsurance Program.** Beginning January 1, 2006 **and ending December 31, 2008**, members may ~~reinsure with~~ **purchase facultative insurance from** the pool **for** health coverage provided to small employers as follows:

4 New Paragraph; Reinsurance Program. Amend RSA 420-K:5 by inserting after paragraph X the following new paragraph:

XI. Reinsurance coverage under this section shall terminate on December 31, 2008.

5 New Section; Treaty Reinsurance Program. Amend RSA 420-K by inserting after section 5 the following new section:

420-K:5-a Treaty Reinsurance Program. Beginning January 1, 2009, members who provide health insurance to small employers shall be provided reinsurance by the pool on a modified coinsurance basis as follows:

I. The intent of the reinsurance coverage provided under this section is to equitably distribute among all health carriers the cost of catastrophic claims incurred by individuals insured under health coverage provided to small employers.

II. The pool shall reimburse carriers a percentage of the claims incurred in a calendar year in excess of the reinsurance threshold of \$200,000 on lives insured in the small group health insurance market.

III. Carriers shall not be charged a ceding premium.

IV. At the end of each calendar year, the board shall calculate actual claims incurred by carriers writing small group health insurance that are in excess of the threshold. After providing for the pool's operating expenses, the board shall allocate funds available through regular assessments to such carriers in proportion to these actual claims.

6 Assessments for the Facultative Reinsurance Program. Amend the section heading and paragraph I of RSA 420-K:6 to read as follows:

420-K:6 Assessments **for the Facultative Reinsurance Program.**

I. Following the close of each fiscal year, the administrator shall determine the net premiums, the pool expenses of administration and the

incurred losses for the year *for the facultative reinsurance coverage it provides*, taking into account investment income and other appropriate gains and losses *relating to the facultative reinsurance program*.

(a) Each member's assessment for the ~~[reinsurance pool]~~ *facultative reinsurance program* shall be based on its number of covered lives times a specified assessment rate. The board of directors shall specify the basis used to set the assessment rate. The board of directors shall establish a regular assessment rate, which shall be:

(1) Calculated on a calendar year basis based on the net losses from the audited financial statements of the prior fiscal year;

(2) Established no later than November 1 in the current fiscal year; and

(3) Anticipated to be sufficient to meet the pool's funding needs *for the facultative reinsurance program*.

(b) In addition to the regular assessment rate, the board may establish a special assessment rate for organizational expenses and to pay claims reinsured by the pool *under the facultative reinsurance program*. Notwithstanding RSA 420-G:4, a writer of health insurance may increase the premiums charged by the amount of the special assessment. Any assessment may appear as a separate line item on a policyholder's bill.

(1) The board shall only establish an interim assessment if the board determines that its funds are or will become insufficient to pay ~~[the reinsurance pool's expense or claims reinsured by the pool]~~ *pool expenses or claim losses relating to the facultative reinsurance program*, in a timely manner.

(2) The regular assessment rate, and any special assessment rate, shall be subject to the approval of the commissioner. The commissioner shall approve the rate if he or she finds that the amount is required to fulfill the purpose of the reinsurance pool. For the purpose of making this determination, the commissioner may, at the expense of the pool, seek independent actuarial certification of the need for the proposed rate.

(c) The board shall impose and collect assessments on members of the pool.

(d) If the assessment exceeds the amount actually needed, the excess shall be held and invested and, with the earnings and interest thereon, be used to offset future net losses. Each covered life shall be included in the assessment on an aggregate basis and procedures shall be maintained to ensure that no covered life is counted more than once.

7 New Section; Assessments for the Treaty Reinsurance Program. Amend RSA 420-K by inserting after section 6 the following new section:

420-K:6-a Assessments for the Treaty Reinsurance Program.

I. Members shall pay a regular assessment of \$24 per covered life per year to fund pool expenses of administration and claim losses relating to the treaty reinsurance program.

II. The board shall impose and collect assessments on members of the pool.

III. Each covered life shall be included in the assessment on an aggregate basis and procedures shall be maintained to ensure that no covered life is counted more than once.

IV. Provision shall be made in the plan of operation for the imposition of an interest penalty for late payment of assessments.

V. The board may defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assess-

ment would endanger the ability of the insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is deferred in whole or in part, the amount by which such assessment is deferred may be assessed against the other members in a manner consistent with the basis for assessments set forth in this chapter. The member insurer receiving such deferral shall remain liable to the pool for the amount deferred. The board may attach appropriate conditions to any such deferral.

8 Repeals. The following are repealed:

I. RSA 420-K:2, III, relative to the initial board of the reinsurance pool.

II. RSA 420-K:4, relative to a standard health benefit plan.

9 Committee Established. There is established a committee to study the small group reinsurance pool. The commissioner of the department of insurance shall prepare a report which evaluates the effect of the reinsurance pool on small group health insurance and the small group market and shall submit such report to the committee for its review on or before December 1, 2009. The report shall quantify the impact of the reinsurance pool on small group premiums and any cost savings to the carriers resulting from the pool.

10 Membership and Compensation.

I. The members of the committee shall be as follows:

(a) Two members of the senate, appointed by the president of the senate.

(b) Three members of the house of representatives, appointed by the speaker of the house of representatives.

II. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

11 Duties. The committee shall review the report prepared by the commissioner of the department of insurance evaluating the effect of the reinsurance pool on small group health insurance and the small group market and shall make recommendations for any legislative changes the committee deems necessary.

12 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named senate member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Three members of the committee shall constitute a quorum.

13 Report. The committee shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2010.

14 Statement of Purpose. The purpose of sections 15 through 20 of this act is to clarify the original legislative intent in establishing the New Hampshire vaccine association and to ratify the manner in which the New Hampshire vaccine association has administered assessments. The provisions in these sections clarify that all writers of health insurance are members of the New Hampshire vaccine association, whether domestic or foreign. As members of the New Hampshire vaccine association, all writers of health insurance are entitled to vote for board representation and are subject to the assessment. Since its creation in 2002, all writers of health insurance have been treated as members of the New Hampshire vaccine association and have been subject to assessment.

15 New Hampshire Vaccine Association; Reference Deletion. Amend RSA 126-Q:3, I to read as follows:

I. The New Hampshire vaccine association shall be comprised of all [licensed] insurers currently writing or maintaining health insurance in New Hampshire.

16 New Hampshire Vaccine Association; Reference Deletion. Amend RSA 126-A:3, III(a) to read as follows:

(a) Three representatives selected from the [licensed] insurers ***currently writing or maintaining health insurance in New Hampshire and*** having the most covered lives in New Hampshire.

17 New Hampshire Vaccine Association; Reference Deletion. Amend RSA 126-Q:3, V(j) and (k) to read as follows:

(j) Notify, in writing, each [licensed] insurer of the insurer's assessment by November 15 of each year.

(k) Submit an annual report to the commissioner of insurance listing those [licensed] insurers that failed to remit their assessments.

18 New Hampshire Vaccine Association; Reference Deletion. Amend RSA 126-Q:4, IV to read as follows:

IV. Each [licensed] insurer ***writing or maintaining health insurance in New Hampshire*** shall be assessed in proportion to the number of its covered lives.

19 New Hampshire Vaccine Association; Reference Deletion. Amend RSA 126-Q:5, I to read as follows:

I. The commissioner of insurance shall fine any [licensed] insurer that fails to pay an assessment within 6 months of notification under RSA 126-Q:3, V(j). The fine shall be at least \$5,000 and no more than 125 percent of the amount of the delinquent assessment. Fines so levied shall be deposited with the state treasurer to the credit of the vaccine purchase fund established pursuant to RSA 141-C:17-a.

20 Repeal. RSA 126-Q:1, VI, relative to the definition of "licensed insurer," is repealed.

21 Effective Date.

I. Paragraph II of section 8 of this act shall take effect January 1, 2009.

II. The remainder of this act shall take effect July 1, 2008.

2008-0812s

AMENDED ANALYSIS

This bill clarifies the board of directors of the small employer reinsurance pool. This bill also establishes a treaty reinsurance program which will provide reinsurance by the pool on a modified coinsurance basis to members of the pool who provide health insurance to small employers. This bill also establishes a committee to review a report prepared by the commissioner of the department of insurance detailing the effects of the reinsurance pool on small group health insurance and the small group market.

SENATOR GOTTESMAN: Thank you, Madam President. I move Senate Bill 468 ought to pass with amendment. This bill originally intended to revise the board of directors of the Small Employer Reinsurance Pool. As amended, this bill also addresses several issues of critical importance to the operation of the New Hampshire High Risk Pool, the New Hampshire Vaccine Association, and the New Hampshire Small Employer Reinsurance Pool. The amendment clarifies the original intent of the definition of a "covered life" to include members covered by governmental plans. It also makes significant changes to the reinsurance pool by eliminating medical underwriting and health statements. The committee heard testimony from several carriers who agreed that health statements are a

nuisance to both patients and carriers. Patients find the statements to be invasive, and carriers find them to be costly and resource-intensive. This is an opportunity to level the playing field for health insurance providers while at the same time spreading the cost related to the insurance pool among a broader base of participants. The amendment also establishes more representation on the reinsurance pool board by adding a producer representative and two representatives from the small business community. Furthermore, it establishes a Joint Legislative Oversight Committee to evaluate the impact of the reinsurance pool on reducing or stabilizing premiums in the small group market, and on the carriers' administrative costs. Finally, the amendment clarifies the original intent of the New Hampshire Vaccine Association law to say that all writers of health insurance, whether domestic or foreign, are members of the Vaccine Association. The Committee heard testimony from the Department of Health and Human Services and the New Hampshire Vaccine Fund that substantiated that this revision is critical to the efficiency and continuation of our state's exemplary universal vaccine program. Please join the members of the Commerce, Labor and Consumer Protection Committee in supporting Senate Bill 468 as ought to pass as amended. Thank you, Madam President.

(The Chair recognized Sen. Gatsas to speak.)

SENATOR GATSAS: Thank you, Madam President. As I look around the room, there are 12 Senators in this chamber that voted for the reinsurance pool some three years ago, and the expectations of the reinsurance pool at that time was the ability to share risk. We all assumed, when we put that legislation together, that, one, the risk would not only be shared to the small group, but it would also be shared to the large group. That's what we put in law. There was one insurance company that decided they didn't want to spread the risk to the large group, so they didn't. I don't know how you circumvent law. It was the intent of this body when we passed that bill that that was what was going to happen. The intent of this body when we passed that bill was to make sure that we had a reinsurance number that would be five times the premium of the base rate to seed to the pool. Now, I know I'm at about 35,000 feet and maybe everybody's not going to understand this, but I'm going to try and bring it down to another level. That number was supposed to be somewhere in the vicinity of \$1500 a month to seed that premium, without the applicable rating factors to it, along with the \$5,000 deductible. That base rate, with the \$5,000 deductible, went to \$232 per month. Now, we probably, all in this chamber, we could find an awful lot of small businesses that would love to find a premium at 232 with a 5,000 deductible. That created the ability for insurance companies to seed lives at a much lesser expense than what it was going to cost 'em to insure that life. What happened? What company understood that the amount of money it was going to cost 'em was about \$25,000. So any claim above \$25,000, you could seed to the pool and the pool would pay for it. There are other companies that said that they didn't seed anybody. Well, I scratch my head and say: I didn't think that that would be the attachment point. So why didn't they seed somebody. We heard at a meeting we were sitting at that they didn't have the people in-house to do that.

I think it's important that we understand, when we passed that legislation it was the first segment of trying to reduce healthcare costs. As a matter of fact, one company did reduce their costs. And if they had applied the assessment to their large employers, it would have not only been an 18 percent reduction, it would have been a 16 percent reduc-

tion. So certainly it worked, and now we're taking the attachment point and changing it to \$200,000. We might as well just abolish the reinsurance pool. With an attachment point of \$200,000, it doesn't exist. There is nobody that's going to seed to it, because most people's attachment points are at a hundred, as we heard from the insurance companies in the meeting that we were at. So the one thing that we attempted to do three years ago, to bring down rates to the small employers, wasn't the fault of this body that it got out of control. To sit there and think it was reasonable to have a \$5,000 deductible with a \$232 a month premium is unreasonable. As a matter of fact, they just increased the deductible to 10,000. And you know what that does to the monthly premium? It reduces it to \$172. So 5 times \$172 brings you somewhere to about \$810 a month for a plan, when people are paying more than that to the carrier. I don't think this body ever intended to apply a broken system. There was a board of directors, we have an Insurance Commissioner; somebody should have seen the light go on, and say: Wait a minute. This is a problem. How are we letting it exist? But now as a Legislature we're coming back and we're abolishing the one thing that we believed three years ago was going to reduce healthcare costs to the small employer. It has, but we haven't let it work long enough. Thank you, Madam President.

(The Chair recognized Sen. Hassan to speak.)

SENATOR HASSAN: Thank you, Madam President. I rise in support of Senate Bill 468 with the committee amendment. I agree that we made a good start three years ago in creating this reinsurance pool and a mechanism for spreading risk for small business insurance costs among the greater group insurance community. And I don't think the issue today is about whose fault it is or is not about whether things worked exactly the way we had intended or planned. I think the fact that some carriers, as well as our own Insurance Department, came to some of us and said we needed to make some adjustments in the composition of the board and perhaps in the deductible that insurers paid to – for the cases they seeded into the pool, gave us an opportunity to look at what we were doing, and gave us an opportunity to think if we could improve things further, given the experience of the pool, over the last three years. And that's, in fact, what I think this bill does. The problem with the calculation of the premium that Sen. Gatsas referred to is a problem that has been reviewed by the Insurance Department and the Attorney General's Office and found to be within the intent of the law. But, more importantly, was really addressed by increasing the deductible that small business carriers paid into the pool, to \$10,000. But the real issue that we discovered as we talked to carriers about the way the pool is currently working is the following: that one carrier with great expertise and infrastructure towards medical underwriting had an advantage in the marketplace because of their expertise and their infrastructure. They happened to be the carrier that also medically underwrites for our high-risk and individual pool. So, with that regard they already had resources that could allow them to calculate the value that they needed to apply to covered lives based on the health statements that employees submitted to their insurance carriers. And what we found is that there's a lot of resources going into the evaluation of these medical statements that employees have been submitting. This makes employees uncomfortable, they don't like doing the statements. And it means simply that the carrier that is largest with the most expertise in medical underwriting has an unfair advantage, or a competitive advantage; it isn't necessarily unfair. The question for me has been whether we want healthcare dollars, insur-

ance dollars, to be focused on medical underwriting, after the fact, to see who can gain biggest advantage in the pool, or whether in fact what we really want to do is share the risk of truly catastrophic cases in the small business market.

What these changes in 468 do is create a corporate reinsurance model for the small business market, rather than this kind of hybrid reinsurance mechanism that we did three years ago. What this bill would do was eliminate the need for consumers, the covered lives in the small business market, to complete medical statements after they got – after their employer got an insurance contract. They won't need to do that anymore. Nobody will have to figure out which lives are going to seed to a reinsurance pool ahead of time, and what will happen is simply if a case reaches a point of \$200,000 medical claim, the reinsurance pool will cover that claim. And it won't matter whether one carrier or the other has been better predicting whether a particular consumer was going to get sick or not. All that's going to happen is we're just going to spread the risk when somebody has a true catastrophe. I think that's consistent with what we were trying to do three years ago. It will lower the assessment that will be made to support this reinsurance pool; therefore lowering potential premium increases as a result. And the testimony was pretty compelling. The \$200,000 is a typical reinsurance point for corporate reinsurance. I know that this is complicated and I know it's hard to make reinsurance interesting, even at the beginning of a very long day. But I do believe that – I do believe that these changes will help us truly spread catastrophic risk, level the playing field for all the carriers. We heard from some carriers that they really were considering leaving New Hampshire or stopping writing any new coverage in New Hampshire, under the current model, because they just didn't feel that they should invest what would be needed for them to become experts in medical underwriting for such a small market. Thank you.

(The Chair recognized Sen. Gatsas for a question of Sen. Hassan.)

SENATOR GATSAS: Two questions, as a matter of fact, Madam President, if I may. Senator, can you tell me what the attachment point for the State self-funded plan, 'cause that's a large group, what's that attachment point before the reinsurer steps in?

SENATOR HASSAN: I can't tell you.

SENATOR GATSAS: Would you believe it might be a hundred thousand?

SENATOR HASSAN: I could easily believe that.

SENATOR GATSAS: So this reinsurance pool would have a higher attachment point than the State plan.

SENATOR HASSAN: Right. The attachment point was recommended by the Department of Insurance, partly looking at how much we wanted the assessment to be throughout the entire group market base.

SENATOR GATSAS: Follow-up question. Senator, so this doesn't have the 60-day window that the original reinsurance pool mechanism had, that a carrier would look at an individual, and within the first 60 days place them to that pool after they saw what their medical survey was.

SENATOR HASSAN: The whole point of this is to take away that 60-day window and looking at particular consumers and their medical case. All the health statement gives us is a snapshot in time of somebody's health experience. It doesn't tell us whether the 61st day they're going to have a car accident and need half a million dollars of medical care. So this

would help the insurance companies that have that consumer who has the truly catastrophic incident spread that risk. Our plan of three years ago didn't help in those cases; it only helped carriers who were very good at reading the "tea leaves" of a medical statement.

SENATOR GATSAS: Follow-up. Would you agree, Senator, that somebody that's in a car accident has a subrogation to his car insurance? So it doesn't really affect health insurance. But I guess my direct question is – my direct question is: So if somebody at the end of eight months has a premature birth, and it's a million dollars, they can seed that life to this pool at any time.

SENATOR HASSAN: My understanding is that once their claim reached above \$200,000 they would have access to reinsurance from what is now and more typical corporate reinsurance pool. And certainly there are many cases in which medical care rose to more than \$200,000. And the point is to spread that risk, not necessarily to be particularly good at predicting that risk.

(The Chair recognized Sen. Gatsas to speak.)

SENATOR GATSAS: Thank you, Madam President. After listening to the answers to my questions, I can only tell you one thing: that the sophisticated insurance companies are going to see those lives that are exceeding \$200,000, they're going to seed them to this pool, and the risk that's going to be shared is going to be much greater than what we ever anticipated in a reinsurance pool. Because the previous insurance pool – reinsurance pool, we had a 60-day window; you must see that life within 60 days. What happened is we had placed an amendment on the first bill that allowed existing lives to be placed. We are now inviting insurance carriers to drop their lives into this reinsurance pool, and we're going to spread the risk. So they don't have to manage risk after 200,000, they have a spot to put it. This is going to create a huge problem for the small employers in the State of New Hampshire. Thank you, Madam President.

(The Chair recognized Sen. Hassan to speak.)

SENATOR HASSAN: Simply with respect, I disagree with my colleague, because I think the whole notion here is we're not – this is not about predicting which cases will become \$200,000 cases and seeding them into a pool. This is not allowing any case to be covered by the pool, unless and until the claims reach \$200,000. This bill brought no opposition in committee, the carriers understand it, the Insurance Department understands it, and the Insurance Department has run figures which show that this should lower the assessment and, we hope, keep premiums lower as a result. Thank you.

The question is on the adoption of Committee Amendment 0812s.

A roll call was requested by Sen. Gatsas, seconded by Sen. Barnes.

PARLIAMENTARY INQUIRY

SENATOR KENNEY: Parliamentary inquiry, Madam.

PRESIDENT LARSEN: Parliamentary inquiry.

SENATOR KENNEY: Are we voting on the amendment or the bill?

PRESIDENT LARSEN: We are voting on the amendment.

SENATOR KENNEY: Thank you.

Motion for roll call withdrawn.

The question is on the adoption of Committee Amendment 0812s.
Committee Amendment 0812s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 468.

A roll call was requested by Sen. Gatsas, seconded by Sen. Barnes.

The following Senators voted Yes: Reynolds, Sgambati, Burling, Cilley, Janeway, Kelly, Bragdon, Gottesman, Foster, Larsen, DeVries, D'Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Kenney, Odell, Roberge, Clegg, Gatsas, Barnes, Letourneau, Downing.

Yeas: 15 - Nays: 9

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 500-FN, relative to certain insurance fraud. Commerce, Labor and Consumer Protection Committee. Ought to Pass with Amendment, Vote 6-0. Senator Barnes for the committee.

Commerce, Labor and Consumer Protection

March 4, 2008

2008-0827s

01/10

Amendment to SB 500-FN

Amend the title of the bill by replacing it with the following:

AN ACT relative to certain insurance fraud, relative to workers' compensation for employee leasing companies, and establishing a task force on employee misclassification.

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraph; Administrative Services; Duties of the Commissioner. Amend RSA 21-I:13 by inserting after paragraph XIV the following new paragraph:

XV. Maintain a list of persons who have been prohibited from participating in public works projects under RSA 638:20. Such list shall be a public record under RSA 91-A.

2 Workers' Compensation; Liability of Employer Failing to Comply. Amend RSA 281-A:7, VI to read as follows:

VI. Any employer, individual, or corporate officer required to secure payment of compensation under this chapter who fails to secure such payment shall be guilty of a ~~[misdemeanor]~~ **class B felony**.

3 Insurance; Claim Forms. Amend RSA 402:82 to read as follows:

402:82 ~~[Warning Notice on]~~ Claim Forms **and Applications**.

I. All insurance claim forms shall contain a statement that clearly states in substance the following: "Any person who, with a purpose to injure, defraud, or deceive any insurance company, files a statement of claim containing any false, incomplete, or misleading information is subject to prosecution and punishment for insurance fraud, as provided in RSA 638:20." ~~[However, the lack of such a statement shall not constitute a defense against prosecution under RSA 638:20.]~~

II. No insurance company or producer shall accept an application for workers' compensation or property or casualty insurance, unless the application includes:

(a) A written or electronic signature of the producer, unless the transaction does not involve a producer; and

(b) A written or electronic signature of the applicant.

III. The lack of the information required by paragraphs I and II shall not constitute a defense against prosecution under RSA 638:20 or any other criminal statute.

IV. "Electronic signature" shall have the same definition as under RSA 294-E:2.

V. "Written signature" means an original signature or a duplicate copy made by photocopying, facsimile, or other means similar and does not include stamped signatures.

4 New Section; Workers' Compensation; Certificates of Insurance. Amend RSA 412 by inserting after section 37 the following new section:

412:37-a Certificates of Insurance. Every certificate of insurance issued or presented in this state pursuant to a workers' compensation insurance policy shall contain the following information:

I. All states for which such statutory coverage is provided;

II. Names of all executive officers or members who are excluded, if any, pursuant to RSA 281-A:18-a, or a notation that no executive officers or members are excluded; and

III. Names of all sole proprietors or partners who have elected to be covered under the policy or a notation that no sole proprietors or partners are covered.

5 Insurance Fraud; Definitions Added. RSA 638:20, I and I-a are repealed and reenacted to read as follows:

I. In this section:

(a) "Bidding" includes a bid made as any contractor, general contractor, or subcontractor.

(b) "Financial interest" means any direct or indirect interest in the entity, whether as an owner, partner, officer, manager, employee, agent, consultant, advisor, or representative, but does not include an employee who does not participate in management of the entity and ownership in a mutual or common investment fund that holds securities unless the person participates in the management of the fund.

(c) "Insurance policy" includes an actual or purported insurance policy.

(d) "Insurer" includes any insurance company, health maintenance organization, or reinsurance company, or broker or agent thereof, or insurance claims adjuster.

(e) "Participating in public works projects" means bidding or working on any public works project or holding any financial interest in any entity bidding or working on any public works project.

(f) "Public works project" means any construction project financed by public funds.

(g) "Statement" includes, but is not limited to, any notice, statement, proof of loss, bill of lading, receipt of payment, invoice, account, estimate of property damages, bill for service, diagnosis, prescription, hospital or doctor records, x-rays, test results, or other evidence of loss, injury, or expense.

6 New Paragraphs; Insurance Fraud; Penalties. Amend RSA 638:20 by inserting after paragraph V the following new paragraphs:

VI. In addition to any other penalty authorized by law, any person convicted of violating subparagraphs II(a), (b), or (d) relative to a workers' compensation insurance policy shall, as a condition of his or

her sentence, be prohibited from participating in any public works projects for a period of no less than one year and no more than 3 years and shall be ordered to pay restitution to its workers' compensation carrier, as determined by the sentencing court. Any person convicted of a third or subsequent violation may, as a condition of his or her sentence, be permanently banned from participating in any public works projects. For the purposes of this paragraph, "restitution" means the difference between the premium actually charged and the premium amount that would have been charged if accurate information had been provided to the carrier, provided that the carrier is not compensated by the offender more than once.

VII. The commissioner of the department of administrative services shall maintain a list of persons who have been banned from participating in public works projects under this section. Such list shall be a public record under 91-A.

7 Employee Leasing Company; Workers' Compensation. Amend RSA 277-B:5, IV to read as follows:

IV. Every application for an original, renewal or restricted license, shall be accompanied by evidence satisfactory to the commissioner that the leased employees are covered by [a] **one single** workers' compensation policy issued by a carrier admitted to write such coverage in this state. No unlicensed leasing company shall be provided workers' compensation coverage. Employee leasing companies insured in the residual market only shall be issued the National Council of Compensation Insurance Multiple Coordinated Policy as approved by the insurance commissioner. Employee leasing companies insured in the voluntary market shall upon request make available claims data on a client company basis to the National Council of Compensation Insurance. A client company shall be assigned its claims data upon terminating its relationship with an employee leasing company which data shall be used in calculating the client company's subsequent workers' compensation premium. The application shall also be accompanied by evidence satisfactory to the commissioner that any health insurance benefits covering leased employees are provided pursuant to the provisions of RSA 277-B:11, II.

8 Employee Leasing Companies; Workers' Compensation. Amend RSA 277-B:9, II to read as follows:

II. The employee leasing company provides satisfactory evidence to the commissioner that the leased employees are covered by [a] **one single** workers' compensation policy issued by an insurance carrier admitted to write such coverage in this state.

9 Workers' Compensation; Securing Payment of Compensation. Amend RSA 281-A:5, I to read as follows:

I. By insuring and keeping insured the payment of such compensation with [a] **one single** company licensed to write workers' compensation insurance in this state and filing with the commissioner, in a form prescribed by the commissioner, evidence of such coverage as the commissioner deems appropriate.

10 Task Force Established. There is established a task force to study employee misclassification.

11 Membership and Compensation.

I. The members of the task force shall be as follows:

(a) One member of the senate, appointed by the president of the senate.

(b) Two members of the house of representatives, appointed by the speaker of the house of representatives.

- (c) The commissioner of the department of labor, or designee.
- (d) The commissioner of the department of employment security, or designee.
- (e) The commissioner of the department of insurance, or designee.
- (f) The commissioner of the department of revenue administration, or designee.
- (g) The attorney general, or designee.
- (h) A member of a labor union representing building trades, appointed by the governor.
- (i) A member of an organization representing contractors in the construction industry, appointed by the governor.
- (j) A small business owner from outside the construction industry, appointed by the governor.
- (k) A large business owner from outside the construction industry, appointed by the governor.

II. Legislative members of the task force shall receive mileage at the legislative rate when attending to the duties of the task force.

12 Duties. The task force shall study employee misclassification and shall coordinate investigation and enforcement of employee misclassification matters.

13 Chairperson; Quorum. The members of the task force shall elect a chairperson from among the members. The first meeting of the task force shall be called by the first-named senate member. The first meeting of the task force shall be held within 45 days of the effective date of this section. Six members of the task force shall constitute a quorum.

14 Report. The task force shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2008.

15 Effective Date.

I. Sections 7-14 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect January 1, 2009.

2008-0827s

AMENDED ANALYSIS

This bill:

I. Increases the penalties for insurance fraud. This bill also increases the penalty for employers who fail to secure workers' compensation.

II. Clarifies workers' compensation coverage for employee leasing companies.

III. Establishes a task force on employee misclassification.

SENATOR BARNES: Thank you, Madam President. I move Senate Bill 500 ought to pass with amendment. This bill increases the penalties for insurance fraud. This bill also increases the penalties for employers who fail to secure workmen's compensation. The bill was amended to increase the penalties for insurance fraud from a misdemeanor to a Class B felony, allowing the Department of Labor more time to prosecute workmen's compensation cases. The bill was also amended to clarify that "a company" means "one company," to address concerns from the Department of Labor and several insurance providers that it would be problematic, particularly, with regard to fraud detection, for a company to have more than one insurance carrier. Furthermore, the amendment establishes a task force to investigate abuse of workmen's compensation, and includes representatives from labor, construction, and small business. This task force will lead to better enforcement and a better understanding of how we can further

address problems in the workmen's compensation system. The committee amendment simply changed that sections 7 through 14 take effect immediately upon passage rather than 10 through 14. Please join the members of the Commerce, Labor and Consumer Protection Committee in voting yes on this very important bill.

The question is on the adoption of Committee Amendment 0827s. Committee Amendment 0827s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 500-FN.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 532, relative to administrative fines under the indoor smoking act. Commerce, Labor and Consumer Protection Committee. Ought to Pass, Vote 6-0. Senator Gottesman for the committee.

SENATOR GOTTESMAN: Thank you, Madam President. I move Senate Bill 532 ought to pass. This bill establishes who the administrative fines for persons violating the Indoor Smoking Act will be paid to. Senate Bill 532 addresses concerns that were raised during the JLCAR proceedings in regards to the enforcement of the Indoor Smoking Act. And this bill clarifies and corrects and fixes an interpretation of the attorneys in the Office of Legislative Services, and establishes who has power over the enforcement. Senate Bill 532 gives the enforcement authority to the Department of Health and Human Services, as was originally intended. I will say that this interpretation was not as a result of the legislation that we passed last year. But an unsolicited opinion that related to pre-existing law. Please join the members of the Commerce, Labor and Consumer Protection Committee in voting Senate Bill 532 ought to pass. Thank you, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on SB 532.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 537, relative to allowing the commissioner of the department of employment security to participate in a joint local employment dynamics program with the United States Census Bureau and the Bureau of Labor Statistics. Commerce, Labor and Consumer Protection Committee. Ought to Pass, Vote 6-0. Senator Gottesman for the committee.

SENATOR GOTTESMAN: Thank you, Madam President. I move Senate Bill 537 ought to pass. This bill allows the Commissioner of the Department of Employment Security to participate in the joint Local Employment Dynamics Program with the U.S. Census Bureau and the Bureau of Labor Statistics by providing certain information. This bill is a request of the Department of Employment Security. The Committee voted unanimously to allow New Hampshire to participate in the joint Local Employment Dynamics Program, a program that will ensure New Hampshire continues to promote economic prosperity in this ever-increasing global economy. And I will say the most important aspect is, is that it is free. Not only will we be able to access valuable economic and workforce data through the Local Employment Dynamics Program, but we will have access to information that will help improve our state's transportation planning and emergency management agendas. Information provided by this program was crucial last year in the aftermath of the tragic interstate bridge collapse in Minneapolis. Within minutes of the collapse, data from this

product helped local officials determine morning and evening traffic patterns by estimating the amount of people who lived on either side of the river and developed a plan for them.

The Committee heard testimony from the Executive Director of the Workforce Council who speculated that data provided by this program will be essential to specific problems New Hampshire faces today, such as recovering from disastrous floods and the rebuilding of Coos County after the collapse of the paper industry this year. The Committee also heard testimony from the Department of Employment Security that relieved concerns surrounding privacy. The Committee was informed that data provided to the Census Bureau is already collected and sent regularly to the Department of Labor. The Committee was assured by the Department of Employment Security that U.S. Census Bureau is committed to keeping all information confidential, and that 48 states have already agreed and are part of this plan at the present time. Please join the members of the Commerce, Labor and Consumer Protection Committee in voting Senate Bill 537 ought to pass. Thank you, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on SB 537.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 337-FN, relative to home education of children. Education Committee. Ought to Pass with Amendment, Vote 4-2. Senator Estabrook for the committee.

Sen. Estabrook, Dist. 21

February 15, 2008

2008-0661s

04/10

Amendment to SB 337-FN

Amend the bill by replacing all after the enacting clause with the following:

1 Home Education; Notification. Amend RSA 193-A:5, I to read as follows:

I. **(a)** Any parent commencing a home education program for a child, for a child who withdraws from a public school, or for a child who moves into a school district shall notify the commissioner of education, resident district superintendent, or principal of a nonpublic school ~~[of such within 30 days]~~ **prior to commencement of such program.**

(b) Any parent planning to continue a home education program under subparagraph I(a) shall notify the commissioner of education, resident district superintendent, or principal of a nonpublic school within 30 days of the anniversary of commencement of the home education program or by the first school day according to the school calendar in the child's resident school district.

2 New Paragraph; Home Education; Notification. Amend RSA 193-A:5 by inserting after paragraph IV the following new paragraph:

V. Prior to the initial year of a home education program, a parent shall provide to the department of education, resident district superintendent, or principal of a nonpublic school, information which summarizes planned and supervised instructional and related activities, including a draft curriculum demonstrating instruction in science, mathematics, language, government, history, health, reading, writing, spelling, the history of the constitutions of New Hampshire and the United States, and an exposure to and appreciation of art and music.

3 Effective Date. This act shall take effect July 1, 2008.

2008-0661s**AMENDED ANALYSIS**

This bill makes various changes to the notification requirements for parents involved in a home education program.

SENATOR ESTABROOK: Thank you, Madam President. I move Senate Bill 337 ought to pass with amendment. This bill makes two changes to our homeschooling law in recognition of our responsibility to ensure the opportunity for an adequate education for *all* New Hampshire children. The Committee and sponsors acknowledge the dedication and fine work of the vast majority of parents who are homeschooling, those whom we have heard from a lot in the past weeks. The changes contained in this bill should not create a great burden for these families. However, as with any system, there are those who misuse and abuse the system, and it is our responsibility to provide a level of accountability that safeguards all children. The first change is to return a requirement that existed prior to last term regarding curriculum planning. Prior law required parents to submit a curriculum plan for each child, each year. SB 337 requires only a draft curriculum plan only in the first year of homeschooling. Department of Education testimony supported this change as a mechanism that helps parents understand what they are undertaking. The draft plan is always subject to change and is approved or disapproved only for its attention to all of the curriculum areas outlined, not for its content. The second change is to require parents to notify the chosen cooperating entity *prior* to beginning homeschooling, not within 30 days as current law states. This change is necessary, especially in light of the passage of SB 18, because current law makes it impossible to know if a student is truly homeschooled or truant under the cover of beginning homeschooling within 30 days. Thank you, Madam President.

(The Chair recognized Sen. Gatsas for a question of Sen. Estabrook.)

SENATOR GATSAS: Thank you, Madam President. Senator, is there a reason why we eliminated homeschoolers, or why the vote to eliminate homeschoolers from the 18-year-old bill? Is there a reason why we eliminated 'em out of that bill?

SENATOR ESTABROOK: Yes. There was opposition from the homeschool community that they should be left to determine that on their own, and we yielded it to that.

(The Chair recognized Sen. Gatsas to speak.)

SENATOR GATSAS: Thank you, Madam President. In case my colleagues haven't recognized, the homeschool society is absolutely opposed to this amendment and this piece of legislation. So if we certainly heard their views loud and clear when the last piece of legislation was passed, I would think that we would hear their views loud and clear with this piece of legislation, and I would ask my colleagues to vote this bill down. Thank you.

**The question is on the adoption of Committee Amendment 0661s.
Committee Amendment 0661s adopted.**

(The Chair recognized Sen. Letourneau to speak.)

SENATOR LETOURNEAU: Thank you, Madam President. While I don't claim to be an expert of homeschooling, I have a some comments here that I've got from some of the homeschoolers themselves that I would

like to share with the body. First one came in while we were sitting here speaking and I think it makes a little sense to talk about this one. This young lady who homeschools in my home district of Derry says that she is required to do reading, writing, language, the Constitution of the United States and New Hampshire, and exposure to the appreciation of art and music. And she's already obligated to prove that "my children make an educational progress; they either see a teacher who elevates the subjects they have, or they have a standardized test that accesses their level of education achievement in these areas." She goes on to further say that "The curriculum that I plan is subject to change throughout the year," so that this may become obsolete during the early part of the education that she's providing. It is my understanding why a public school must provide – it is understandable why a public school must provide this information to parents, for they are receiving a service that they pay for. I also understand that the State considers itself obligated to ensure educational progress of its young citizens and that obligation is sufficiently covered ..." –

PARLIAMENTARY INQUIRY

SENATOR GATSAS: Parliamentary question, Madam President.

PRESIDENT LARSEN: Senator Gatsas.

SENATOR GATSAS: Do our Rules allow somebody to read from an electronic device?

PRESIDENT LARSEN: They do not. Senate Rule 2 prohibits members from using electronic devices.

SENATOR LETOURNEAU: Okay. Well, I'll put that one down and I'll read from my printed comments. Thank you.

PRESIDENT LARSEN: Please return to your printed devices. I would remind all members that the use of electronic devices, including personal computers and telephonic devices, may not be used on the Senate floor. You may continue with your printed remarks.

SENATOR LETOURNEAU: Thank you. This comes from another homeschooler, and it's a little bit different in its makeup, but it kind of conveys the feelings of the homeschoolers in general. And this is from a homeschooling mother, her name is Jenna Libadie. And I had asked her if I could read these comments on the Senate floor, and she said yes. She wanted to thank us for our consideration on our position of Senate Bill 337, and says that "It's clearly an uphill battle based on some of the comments quoted by supporters of this legislation at the hearing. And some of these comments were, I think we have a responsibility to know where these kids are, and I would give these kids identifiers. Homeschoolers are not doing a good job of preparing kids for public school. The school district has an obligation to know where they are and what they are doing. The comment about preparing for public school particularly is concerning to me, as the point to prepare our children for life. Colleges are clamoring for homeschooled children precisely because they are not publicly schooled. There's a fine line between the State's responsibility to meet the requirement to provide education for its children, and invading privacy and thereby violating the freedom of families. There is always going to be abuse on both sides. That being said, it seems absurd that any parent who is committing their time, money and personal resources to educate their children, would then do anything less than the very best for those children. We realize what one family considers best may not be

the public norm. But really, isn't that what New Hampshire and America is all about. I don't have to agree with another parent's way of doing things nor their belief system to defend their freedom to pursue both." "As to the comments about tracking home schooled children, we are curious: Do we track all school-aged children in the state, including all privately schooled children? If so, I don't know how it can be beneficial, rather than just bureaucratic, 'cause at least it doesn't single out the homeschoolers. Personally, I have a background of sociology and I like having data to help me form and defend positions. The more data followed by accurate and non-misleading statistics out there, the more ignorance that is exposed. But not all homeschooling families want to be part of statistics. This is partly a privacy issue, and I suspect that it's largely a trust issue. Again, someone with a background into sociology, I'm painfully aware of the ability to skew the data, extraction-collection methods to skew the results. Many home-schooling families look at IQ and SAT testing and the inherent bias in those that are glaring examples how data can be terribly misleading. Until we have the methods to do this kind of analysis in a more useful way, it is only fair that subjects have a choice to opt in or out of such surveys." And this is just from one of the homeschoolers that, to me, made a lot of sense and she was making a very positive view of how this particular piece of legislation impacts her and the rest of the families that are homeschoolers. Thank you very much.

(The Chair recognized Sen. Foster for a question of Sen. Letourneau.)

SENATOR FOSTER: I certainly respect your position on this, but the comment that you read, particularly about people's views of homeschoolers, my recollection, and I wanted to know whether you had it, was that every Senator, whether they voted for or against the bill, applauded the work that homeschoolers do. Isn't that what you remember from the hearing? 'Cause I certainly don't remember that one comment.

SENATOR LETOURNEAU: Yes, I did. I did.

SENATOR FOSTER: Thank you. Follow-up. The first one you read from. I wanted to know whether you would agree with me that the first person who is already homeschooling, the only thing this bill would do is require that individual, in say August or September on an annual basis, to say I'm still homeschooling, to whoever they choose to make that notification to: the public school district, the private school that they're affiliated with, or otherwise. Isn't that what that particular person would have to do?

SENATOR LETOURNEAU: They were talking about the fact that they had to file a plan, and that plan could very well change during the academic year.

SENATOR FOSTER: Follow-up. But doesn't the bill say that you do it the first time you homeschool, and not thereafter? So, for example: If I decided to start homeschooling my fifth grader, I'd have to file a plan with the district. But when they're in sixth, seventh, eighth, ninth, tenth, twelfth grade, I wouldn't have to do it anymore, it's just that first time? Isn't that how you understand the bill? 'Cause that's how I understand it.

SENATOR LETOURNEAU: That's how we understand the law as it is currently written.

SENATOR FOSTER: No.

SENATOR LETOURNEAU: No.

SENATOR FOSTER: Follow-up. I think that what the law used to say is you had to do it every single year, and everybody agreed that made absolutely no sense.

SENATOR LETOURNEAU: That's right.

SENATOR FOSTER: But the first time you start, it might be a good tool for yourself, to sort of get yourself into the mode of teaching, as these people do so well, to know what you're taking on. So that was why we came up with the first time you do it for that child.

SENATOR LETOURNEAU: And we have no problem with that. The people who are doing homeschooling are very well educated, as you will see next week when we have some home-schoolers here to present what they've done in their homeschooled projects. And I think you'll be quite amazed at the accomplishment that these people have made.

SENATOR FOSTER: I think I will. Thank you.

(The Chair recognized Sen. Bragdon to speak.)

SENATOR BRAGDON: Thank you, Madam President. It's no surprise that I'm in opposition to this bill for, I guess, a couple reasons. One, I fail to see what's broken and what we're trying to fix. And, secondly, this whole area of submitting your curriculum, I think really prevents people from entering the homeschooled field, and provides what in a business sense would be a barrier to entry. In terms of failing to see what is broken, I don't recall anything in the testimony at the hearing from any school administrators who pointed out any problems, specific problems or otherwise, with the current system. In fact, the Department of Education testified, was asked about – "The Department of Education said that their aim is to try to deter people who have no serious purpose in homeschooling. Sen. Letourneau asked if there was any evidence of this happening. The Department of Ed. representatives responded they have only anecdotal evidence." There are 4600 students in New Hampshire being homeschooled. That's a group eleven times the size of the House of Representatives. And they have "anecdotal evidence," but they're trying to solve this serious problem that they seem to think exists.

After the hearing we did hear from a couple of superintendents. One superintendent was concerned because he felt that the homeschoolers are not really sufficiently preparing the children for public school. I think this person misses the point. The point for most people who are home-schooling is not to prepare their kids for public school; it's to provide an alternative. And I think if we were to look at the test scores for our public schools, I think the last place they need to be looking for someone to blame is the homeschoolers not preparing the kids adequately. Another superintendent did provide some specific examples, two or three, of things that happened in their district. Most of them, if not all of them, dealt with people who are not following the existing laws all ready. So the last thing we need to be doing is passing another law when people aren't following the first law in the first place. And you'll notice that in this law there's really no enforcement provision. What happens if someone doesn't notify a person that they're doing this, or doesn't submit their curriculum in advance? So, I don't really think we're solving whatever problem there might exist in the first place.

Secondly: I forwarded those superintendent letters to a member of the Homeschool Advisory Council, a group that the Legislature set up to work with the Department of Education, in a collaborative manner, to deal with problems that come up in homeschooling. And this person that I talked to had never heard of these complaints. In fact, had mentioned

when the Department of Education mentioned something, they don't give any kind of details, not who the person is, but what the problem is. This letter from a superintendent described a specific issue – and I'll again reiterate that the current law wasn't being followed in the first place – that these people didn't even know about that this had happened. And the Homeschool Advisory Council people are more than willing to work in a collaborative manner to deal with these problems, because they want the homeschool community to have the highest respect in this state, and if there are any things happening, they want to be able to fix it. So, I really don't think – I haven't been certainly shown, that there's a problems that needs to be fixed.

And the other issue I have is on this issue of curriculum submission. And, you know, I certainly agree that it's a much better situation than it was two or three years ago where every year for every child you had to submit a curriculum. But let me read what this curriculum has to have. And, take into account, put yourself in the place of a – I got a call yesterday, someone from Sen. Downing's district, a professional woman, an attorney, I believe. I thought all the attorneys in the state were in the Senate, but apparently there's a few of them that are left out there. And this lady had decided she was going to homeschool her children. Her children, I think, one is kindergarten, one is third grade or fourth grade. Here's what she has to submit: Information to the Department of Ed. or the school superintendent or a nonpublic school, information, a summarizing plan and supervised instruction activities including – and again, recall we're dealing with a kindergartener and a third grader – draft curriculum demonstrating instruction in science, math, language, government, history, health, reading, writing, spelling, the history of the New Hampshire, the Constitution of New Hampshire, the history of the United States, and the Constitution of the United States. Oh, and by the way, also exposure to an appreciation of art and music. This person told me that if they had read that coming into this, deciding they wanted to do this for what's best for their children, if they had read this, they probably would have not started homeschooling. This provides a barrier to entry to the people that we really want to be homeschooling, those whose primary concern is the education of their children.

People who get involved in homeschooling, one of their biggest issues early on – and I think we all face this, whether we're starting a business, whether we're running for office, or starting a homeschool program – one of the biggest issues is self-confidence: you haven't done this before, you don't know what you're doing. I started a business last year. I had never been involved in the business area before. People involved in homeschooling may not know everything that's involved in homeschooling prior to starting, but they are committed to doing what's best for their kids. I think we need to provide them whatever opportunities we can to do that, and not put up any barriers that may discourage them from doing that. These regulations to someone that doesn't know a lot about the education process coming in, these kinds of things scare them away, and I'm concerned about that. Thank you, Madam Chair.

(The Chair recognized Sen. Burling to speak.)

SENATOR BURLING: Thank you, Madam President. I'm always amazed, Madam President, at how the words and acts of our forefathers impact our day-to-day discussions. And I think it's wonderful that this Sunday we are to see the first two installments of *John Adams*. I mention that simply because of course it's John Adams who really sets this debate for all of us. Because it is John Adams who said in his draft of the Massachusetts Constitution, which we copied, that it is the duty of the State

of New Hampshire to “cherish education.” That imposes an individual duty on each and every one of us, which each and every one of us has gladly accepted. We may differ, and do differ, on the methodologies, but each of us enjoys the privilege to put into law and into act those things that meet the constitution of our state. This bill is about that duty. It is our declaration of how we, as Senators, will ensure that education for *all* our citizens, including, many of you sitting up there, is cherished. We require two minimal contacts from parents who would homeschool. We require, at the beginning, a statement of what a curriculum would be. Now, some of you, including the prior speaker, expressed concern about the complexity and the deterrent qualities of the list of things that must be included within the curriculum. But, you know, that material, that list of items, comes again from our constitution. It is derived from the concepts of John Adams. It is what constitutes an adequate education, which my wonderful colleague from District 21 has spent most of her waking hours for the last few months, helping to craft for all of us. These are things which we, by our constitution, are required to see included in an education. And all we ask of homeschooling parents is a demonstration that those things will be contacted and touched in their homeschooling curriculum. Do we have confidence that they will do that? Yes. Do we have confidence that the initial contact with that list of curriculum items may give people some pause? Perhaps. But is that a bad thing, Senator, that people address the issue of homeschooling with just a moment of second thought, with just a little bit of introspection about how complex it is to teach an adequate education? And, finally, I’d like to say the only other thing we ask, in fulfillment of our duty to cherish education, is that parents tell us, once a year, a single little e-mail, that, yes, I’m still homeschooling my children. Is this an imposition? No. Is it a fundamental statement of fulfillment of our duty as Senators? I think, yes. And will it, in practice, impede anybody who wants to undertake the homeschooling of their children? No. Thank you, Madam President.

(The Chair recognized Sen. Hassan to speak.)

SENATOR HASSAN: Thank you, Madam President. I rise in support of the bill as amended. I do so, first of all, wanting to reinforce that every Senator in this room with whom I have discussed this bill thinks homeschoolers do a wonderful job and fully support homeschooling. In my experience, however, listening to members of our school district, we do hear concerns raised about a very, very, small minority of situations in which some children are exploited by those claiming to homeschool when they’re not intending to. And in those situations, I believe it is our duty to protect those very small group of children, who may in fact be the subject – an adult tells somebody they’re going to homeschool them but really has no intention of doing it, or perhaps the student has been truant, and the parent says: Oh, I’m homeschooling them, 30 days later. I think it is our obligation to look out for that small minority of children who could be exploited in this way. I understand that that may impose some administrative obligations on homeschooling parents to help us establish that check- and-balance, and I regret that it inconveniences them, to some extent. But I also have an obligation to children who aren’t being served well by a very, very small minority of our adults in our state. And so, when I make that balance I come down on the side of supporting this bill. Thank you, Madam President.

(The Chair recognized Sen. Gatsas for a question of Sen. Hassan.)

SENATOR GATSAS: Senator, do you know of any other reason, other than the one that Sen. Estabrook gave me, that removing the home-

schoolers from the 18-year-old mandatory schooling bill, other than the homeschoolers objected to it? Is there another reason why we took them out of there, if you're concerned that they would have to report back to the district?

SENATOR HASSAN: I don't remember all of the reasons that we chose to make that exception when we passed the bill. And that's the best I can answer. Thank you.

SENATOR GATSAS: Thank you.

(The Chair recognized Sen. Barnes for a question of Sen. Hassan.)

SENATOR BARNES: Thank you, Madam President. Senator Hassan, I think we've all heard the speeches and the conversations, we all care about the kids' education. And you talked about that small group of homeschoolers that maybe aren't up to snuff. What are we doing as Senators against that small group of students that aren't getting a good education in our public schools?

SENATOR HASSAN: I think we are all trying as hard as we can to improve our public schools as well. And I would just clarify my remarks to say that I am concerned about children who are in situations where adults are saying that they're homeschooling when they are, in fact, not. And I think that what we're doing today is giving ourselves a means of checking into the real intent of the adults involved in the situation. And I don't pretend to say it's widespread. I just think we've got a minority of kids who may be being exploited in certain ways, and I want to make sure they're all right.

SENATOR BARNES: But how are we handling, if I may? My question was, how are we handling and what are we doing about that small minority in public schools that aren't being educated properly?

SENATOR HASSAN: And I think we have plenty of debate about those issues on this floor in other bills, but I don't think caring for the two are mutually exclusive.

SENATOR BARNES: Thank you.

SENATOR GOTTESMAN: Thank you, Madam President. I move the question.

Sen. Gottesman moved the question.

The Chair moved, without objection, to close debate with two speakers remaining.

SENATOR LARSEN (In the Chair): I have Sen. Fuller Clark and Sen. Reynolds left on the speaking list. I recognize Sen. Fuller Clark.

SENATOR FULLER CLARK: Thank you very much, Madam President. I, too, rise in support of Senate Bill 337, recognizing that I have received many e-mails and comments from individuals who do homeschooling. I recognize their concerns, but I also recognize that we as policy makers have an obligation to make sure that every child in the state is accounted for with regard to the educational opportunities that they have before them, up to the age of 18. And all we are simply asking to do here are two things. One, is that an initial explanation, when a child is going to be involved in homeschooling, from those individuals responsible for the homeschooling, is what are their overall curriculum objectives and plans. They only have to file that once. Not to file that at all, seems to me that it makes it impossible for the Board of Education, and for us as policy-makers, to make sure that we are fulfilling our obligations with regard to education. And, secondly, that we are asking them, on an annual basis,

to inform us that they are continuing that program for their children. If we don't require that, I believe that we are being irresponsible, and we have no way of knowing that these programs are moving forward. It is not to say that there are not the best intentions of the individuals involved in homeschooling, but there has to be a quid pro quo. This is a very small additional requirement that we are placing on them. They can send that information through an e-mail. I mean, there's no limitation on how they can let the appropriate school know that this program is continuing for their children. But I most especially rise because I received some e-mails that quoted, saying that I had spoken during the public hearing against the validity of homeschooling. And I would like to point out, as stands in the committee report, that I was not present at that hearing, unfortunately; that I had other obligations and responsibilities; that I have never made those comments, and that I do believe there is an absolutely important and significant place for homeschooling in the state. And as I look at my three challenging children, I cannot imagine that I would have had the capacity or the ability or the patience to have homeschooled them myself. And so I think it is an enormous commitment that these parents are taking on, and I applaud them and respect them for doing that. Thank you.

(The Chair recognized Sen. Reynolds to speak.)

SENATOR REYNOLDS: Thank you, Madam President. Madam President, this weekend I had an opportunity in my district to participate in an event with some fantastic parents and children. And a lot of those parents were homeschool parents. I have talked to some of the homeschool parents in my district; by and large, highly intelligent, dedicated educators who have a huge commitment to their children, and I'm very proud of them. And so when I began to get the e-mails, I looked at what the bill actually said. And it really said, as Senator Foster indicated, just two things: One, send a quick e-mail to your school, the public school: Yes, I'm continuing to home school, or drop off a note. It didn't seem particularly onerous to me. And the other piece was, at the outset of home schooling, file a curriculum. Just once. Don't have to do it every year. You don't have to do it year after year after year. And I think that we all recognize that very many homeschool parents do a fantastic job. The question becomes for those who may, the very minority, struggle with it, having to come up with a curriculum may be a way of just simply reflecting on whether or not they want to accept that huge challenge. So I'm going to support the bill as amended. And I just want it on the record that all of us, I think, recognize that the vast majority of homeschool parents do a fantastic job. I don't see this bill as a barrier. I see it as being helpful to the very small minority who may need some help, or their children may need some help. Thank you, Madam President.

(The Chair recognized Sen. Letourneau for a question of Sen. Reynolds.)

SENATOR LETOURNEAU: Thank you, Sen. Reynolds, for taking my question. You repeated pretty much what I heard earlier about the fact that we only have to do this once. But I call your attention to line 7 and 8 of the bill. And it says, "resident district superintendent or principal of a non-public school no later than August 1 of each year." So it is an annual obligation.

SEVERAL VOICES: It was amended.

SENATOR REYNOLDS: Thank you for the question ...

SENATOR LETOURNEAU: Oh, this is part of the amendment? I apologize. Thank you very much.

SENATOR REYNOLDS: Thank you, Senator.

The question is on the adoption of Ought to Pass as Amended on SB 337-FN.

A roll call was requested by Sen. Bragdon, seconded by Sen. Barnes.

The following Senators voted Yes: Reynolds, Sgambati, Burling, Cilley, Janeway, Kelly, Gottesman, Foster, Larsen, DeVries, D'Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Kenney, Odell, Roberge, Bragdon, Clegg, Gatsas, Barnes, Letourneau, Downing.

Yeas: 14 - Nays: 10

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

Luncheon Recess/Out of recess.

AFTERNOON SESSION

COMMITTEE REPORTS, RESUMED

SB 339-FN-A, relative to per pupil funding for charter school pupils. Education Committee. Interim Study, Vote 5-0. Senator Fuller Clark for the committee.

SENATOR FULLER CLARK: Thank you very much, Madam President. I move that Senate Bill 339-FN-A be re-referred [sic] to Interim Study. This legislation was introduced to address the per-pupil funding for students in chartered public schools. Moneys currently come to our state from the federal government for vocational, career and other programs, but are not available to chartered public schools who provide these same educational opportunities. Significant testimony was received at the public hearing, and clearly there is a need to look more closely at how our chartered public schools are receiving their fair share of both federal and state education dollars. Therefore, the state [sic] Education Committee asks that this legislation be referred to Interim Study so that the dialogue can continue. Thank you very much, Madam President.

The question is on the adoption of committee recommendation of Refer to Interim Study on SB 339-FN-A.

Motion of Refer to Interim Study adopted.

SB 343-FN, authorizing charter schools to apply for and receive school building aid. Education Committee. Ought to Pass with Amendment, Vote 6-0. Senator Fuller Clark for the committee.

Senate Education

March 6, 2008

2008-0877s

04/09

Amendment to SB 343-FN

Amend the title of the bill by replacing it with the following:

AN ACT making school building aid grants available to charter schools as reimbursement for annual lease costs.

Amend the bill by replacing all after the enacting clause with the following:

1 Annual Grant for Leased Space. Amend RSA 198:15-hh to read as follows:

198:15-hh Annual Grant for Leased Space.

I. The amount of the annual grant for a lease to any school district duly organized, any city maintaining a school department within its corporate organization, any cooperative school district as defined in RSA 195:1, or any receiving district operating an area school as defined in RSA 195-A:1, shall be a sum equal to 30 percent of the amount of the annual payment of the lease incurred, for the cost of leasing permanent space in a building or buildings not owned by the school district or school administrative unit which is used for the operation of a high school vocational technical education program, to the extent approved by the state board of education, provided that the amount of the annual grant in the case of a cooperative school district, joint maintenance agreement, or a receiving district operating an area school, shall be 40 percent plus 5 percent for each pre-existing district in excess of 2 and each sending district, in excess of one, and provided further that no cooperative school district, joint maintenance agreement, or receiving district operating an area school, shall receive an annual grant in excess of 55 percent. For the purposes of this section, the amount of the annual grant for a lease to a vocational technical education center shall be calculated in the same manner as a cooperative school district. ***The amount of the annual grant for a charter school authorized pursuant to RSA 194-B:3-a shall be a sum equal to 40 percent of the amount of the annual lease payment incurred for the cost of leasing space.*** Such lease agreements shall be eligible for grants under this section, provided all of the following conditions apply:

(a) A school district, city, cooperative school district, joint maintenance agreement, [or] receiving district operating an area school as defined in RSA 195-A:1, ***or charter school authorized pursuant to RSA 194-B:3-a***, which receives grants under this section shall remain eligible to apply for, receive, and expend moneys from other state or federal sources made available for the purpose of purchasing new equipment, materials, or supplies necessary for the operation of the program. Moneys received from such other state or federal sources shall not be used to make permanent upgrades or renovations to the leased space.

(b) A lease agreement for permanent space shall be adopted in the same manner as required by law for the passage of construction bonds in the school district, city, cooperative school district, joint maintenance agreement, or receiving district operating an area school as defined in RSA 195-A:1. ***A lease agreement for a charter school shall be approved by the charter school board of trustees pursuant to RSA 194-B:5, III(c).***

(c) An initial lease agreement for a term of 10 years or less shall be eligible to receive grants under this section. Upon renewal, a lease agreement may remain eligible to receive grants, provided the commissioner of the department of education determines that the lease agreement represents an efficient use of state and local resources.

(d) In any fiscal year where the state pays a pro rata share of school building aid grants, the state shall pay the same pro rata share for lease agreements approved under this section.

II. Lease agreements for the use of portable or modular classroom space shall not be eligible for grants.

III. A school district, city, cooperative school district, joint maintenance agreement, [or] receiving district operating an area school as defined in RSA 195-A:1, ***or charter school authorized pursuant to***

RSA 194-B:3-a, shall submit details of the lease arrangement, including a copy of the proposed lease agreement, in writing to the state board of education on such forms as the state board may prescribe. Grant applications for leased space shall be submitted before January 1 of each year in order to be eligible for grants in the fiscal year following the year of submittal. The state board of education shall, no later than March 1, 2004, adopt rules pursuant to RSA 541-A, relative to procedures for grant applications for leased space.

2 Charter School Lease Payment; August, 2008. A grant payment shall be made no later than August 31, 2008 to any eligible charter school for lease costs incurred in the 2008-2009 school year as authorized under RSA 198:15-hh for which aid has not been previously received.

3 Reimbursement for Charter School Lease Payments; 2009 Fiscal Year. Notwithstanding the January 1 application submission deadline in RSA 198:15-c, I and RSA 198:15-hh, III, a charter school submitting an initial application prior to January 1, 2009 for reimbursement of lease costs authorized under RSA 198:15-hh, I which are incurred in the 2009 fiscal year shall be eligible for reimbursement not more than 45 days after receipt of a complete application by the department of education.

4 Effective Date. This act shall take effect July 1, 2008.

2008-0877s

AMENDED ANALYSIS

This bill:

I. Makes school building aid grants available to eligible charter schools approved by the state board of education as reimbursement for annual lease costs.

II. Directs the department of education to make a payment no later than August 31, 2008 to an eligible charter school for lease costs incurred in the 2008-2009 school year.

III. Grants an exception to the filing deadline for eligible charter schools approved by the state board of education seeking reimbursement of lease costs in the 2009 fiscal year.

SENATOR FULLER CLARK: Thank you very much, Madam President. I move Ought to Pass with Amendment on Senate Bill 343-FN. This legislation authorizes chartered public schools to apply for and receive school building aid. There are several excellent state approved, chartered public schools currently operating in our state. However, it came up during the budget discussions last year that state-chartered public schools cannot apply for school building aid. The amendment changes the legislation so that these schools can apply for school building aid, but it will only apply to the costs of leasing space, rather than for building construction, and will still come under the same 40 percent cap. The legislation will clarify that both state and school-chartered public schools may apply for such aid. While there frequently are shortfalls in the funding amount for State building aid, the Education Committee believes that we do have an obligation to assist all of our students. Therefore, the Education Committee unanimously recommends that Senate Bill 343-FN be adopted as amended and asks your support. Again, thank you very much, Madam President.

The question is the adoption of Committee Amendment 0877s.

Committee Amendment 0877s adopted.

Sen. Gatsas offered a floor amendment.

Sen. Gatsas, Dist. 16
March 13, 2008
2008-1011s
04/01

Floor Amendment to SB 343-FN

Amend the title of the bill by replacing it with the following:

AN ACT making school building aid grants available to charter schools as reimbursement for annual lease costs and providing supplemental grants to charter schools for the 2009 fiscal year.

Amend the bill by inserting after section 3 the following and renumbering the original section 4 to read as 5:

4 Charter School Supplemental Grants; Fiscal Year 2009. In addition to any other funds distributed to charter schools for the biennium ending June 30, 2009, the commissioner of the department of education shall distribute supplemental grants on a per pupil basis to all charter schools in operation at the beginning of the 2008-2009 school year. The total of such grants shall not exceed \$1,000,000 and shall be a charge against PAU 06, 03, 02, 02, 02, class 93. The per pupil amount shall be based on charter school pupil enrollment as of July 1, 2008. Grants shall be distributed pursuant to RSA 194-B:11, I(c).

2008-1011s

AMENDED ANALYSIS

This bill:

I. Makes school building aid grants available to eligible charter schools approved by the state board of education as reimbursement for annual lease costs.

II. Directs the department of education to make a payment no later than August 31, 2008 to an eligible charter school for lease costs incurred in the 2008-2009 school year.

III. Grants an exception to the filing deadline for eligible charter schools approved by the state board of education seeking reimbursement of lease costs in the 2009 fiscal year.

IV. Distributes a per pupil supplemental grant to all charter schools in operation at the beginning of the 2008-2009 school year.

SENATOR GATSAS: Thank you, Madam President. I rise with Floor Amendment 1011. May I speak to the amendment as it's being passed out.

PRESIDENT LARSEN: You may speak to that amendment.

SENATOR GATSAS: I certainly applaud the Education Committee for including charter schools and the ability to receive lease payments. And this bill goes into effect July 1, 2008. However, from what I've heard and talked to the charter schools, that if there's not additional funding for September of 2008, that we might as well disregard this piece of legislation 'cause they won't be around. I think it's important that charter schools be looked at as alternative education. Of the four hundred and some-odd students that they have in their programs, over 200 are high school students. They certainly are alternative education. We need to seriously look, and I know that there's a bill going in to Interim Study that will look at charter schools. The problem is, we all understand in the Senate what Interim Study means in a year of an election. So I ask my colleagues, this amendment merely makes a million dollar – it takes a million dollars out of a PAU line, 06, 03, 02, 02, 02, Class 93, of a million

dollars. That is the line item that has alternative education funding in it. The Department of Education, I understand, may have revenues available, even though that they – and I think I understand the Governor's looking for a pass-back of budget dollars, but I think it's very important that we keep charter schools going, especially in the event of the bill and the amendment that just passed. If we're looking to help 'em with lease agreements and building aid, then certainly we should at least attempt to keep them alive for a year so that we can find a permanent source of revenue for them. Thank you, Madam President.

(The Chair recognized Sen. D'Allesandro to speak.)

SENATOR D'ALLESANDRO: Thank you, Madam President. I rise to speak against the amendment. The concept of the charter school was a good one. When the charter school concept bypassed the local authority, it became a bad concept. Because the local authority is where the funding can be found. This Legislature bypassed that authority, went right to the state Board of Education and created charter schools. This is another methodology of doing the same thing. We've asked our state to reduce this budget by \$50 million. We're talking about giving another million to charter schools. Are they alternative schools? Yes. Do we have money in the budget for alternative education? Yes. Is this the way we should spend it? No. The local authority, which we all have so much confidence in, and I served on a local school board for ten years, and charter schools came before our board time and time again. Fourteen elected officials from the City of Manchester were against granting a charter. The mayor also served on our school board, he is the chairman of the school board. So you had the most significant elected official in the city, plus 14 members of the board. If indeed the charter schools want and need money, they should be making their case for that at the local venues, because that's where all of this education takes place. To do something like this again, in my opinion, is a further amplification of circumventing the process. Thank you, Madam President.

(The Chair recognized Sen. Gatsas for a question of Sen. D'Allesandro.)

SENATOR GATSAS: Sen. D'Allesandro. Senator, in the budget that you were Finance Chair for, didn't you place \$800,000 in that budget for charter schools?

SENATOR D'ALLESANDRO: There was \$800,000 in the budget for charter schools, yes.

SENATOR GATSAS: Thank you.

SENATOR D'ALLESANDRO: Did I place it? No, it was in the budget.

SENATOR ODELL: Thank you, Madam President. I, too, rise in opposition to the amendment. I was a strong supporter of the Governor's plan to, as we say, "keep kids in school till they're 18 or get a degree." And the monies that were set aside for alternative education were put in there in the budget, and the spending of that money did not take place until the second half of the school year. So it basically started to be spent in January, because we needed the time for requests for proposals and other things to be done to put programs in place to help through an alternative education process, to get new programs going and new activities going. For us to go and then take some of that money out could jeopardize some programs that are in process, where our fees have gone out, been accepted, and the monies being spent. So I think that this may ... this would be an improper use of that money in terms of the alternative education programs that are going forward. Thank you.

(The Chair recognized Sen. Fuller Clark for a question of Sen. Odell.)

SENATOR FULLER CLARK: Sen. Odell, with regard to those drop-out monies, it's my understanding, but could you clarify this for me, that those charter schools that are able to demonstrate that they are serving students who were not thriving in the regular public school system, are eligible to apply for those drop-out dollars in that special component, so that in a sense that money's already available, at least to certain schools, for a certain percentage of their students; is that potentially true?

SENATOR ODELL: I think that's potentially true, but they would have to meet a criteria of a program that had demonstrated its proficiency and ability to keep kids in school and to help the children graduate.

SENATOR FULLER CLARK: Thank you.

SENATOR ODELL: Thank you.

(The Chair recognized Sen. Gatsas for a question of Sen. Odell.)

SENATOR GATSAS: Thank you, Madam President. Sen. Odell, can I ask you, do you know how many dollars are in that PAU line that I've referenced?

SENATOR ODELL: I think originally – I think the goal for the bien-nium was \$8 million?

SENATOR GATSAS: Follow-up. Do you know how much has been bud-geted out for alternative education for the half of this year and all of next year?

SENATOR ODELL: I do not know what the final number was. I know that the goal is ... through Paul Leather's office, it's my understanding that they plan to get the request proposals in and, over the biennium, spend that money.

SENATOR GATSAS: Would you believe that it's much less than \$8 million?

SENATOR ODELL: I would believe that at this point, but we have an-other full school year in the biennium that could be funded.

SENATOR GATSAS: Follow-up. The line item for '08 and the line item for '09 is a total of 14 million. And the distribution for half of this year and all of next year is much less than 14 million.

SENATOR ODELL: That could be.

SENATOR GATSAS: Thank you.

(The Chair recognized Sen. Gottesman for a question of Sen. Gatsas.

SENATOR GOTTESMAN: I know you like to plan ahead quite a bit, but –

SENATOR GATSAS: Senator, I knew you were going to ask that question.

SENATOR GOTTESMAN: – but on line 11, we're not talking about June 30, 2009.

SENATOR GATSAS: No, Senator, but I know that you, being chairman of Enrolled Bills, would have certainly picked that item up and corrected it in that committee. Thank you, Senator.

SENATOR GOTTESMAN: And these are just the kinds of things that we do in Rules –

SENATOR GATSAS: Absolutely, Senator.

SENATOR GOTTESMAN: Thank you.

(The Chair recognized Sen. Foster to speak.)

SENATOR FOSTER: Thank you, Madam President. I'm going to oppose this amendment. There's a lot of reasons why I oppose it, but probably the most important one – frankly, Sen. Gatsas made the point in the question of Senator, I think it was D'Allesandro or Odell, where he asked, "Well, didn't you put \$800,000 in for the charter schools?" And the answer was, yes. And my understanding is there was discussion about putting more in, and the answer was no. We did our budget. We did it last year. We respect that document once it's done. Yes, sometimes changes are made and – but what we have here is a bill that brings forward a new idea about the leasing aspect of the legislation. That wasn't something that was rejected. But the idea of putting \$1.8 million in was, and we settled on 800,000. That's what we did, that's the decision that was made. Everybody knew it. What we're really trying to do here, in effect, is re-open the budget on a decision that was made. That's not an appropriate way, we can't do business that way. So I'm going to oppose the amendment. Thank you, Madam President.

The question is on the adoption of Floor Amendment 1011s.

A roll call was requested by Sen. Gatsas, seconded by Sen. Barnes.

The following Senators voted Yes: Gallus, Kenney, Roberge, Bragdon, Clegg, Gatsas, Barnes, Letourneau.

The following Senators voted No: Reynolds, Sgambati, Burling, Cilley, Janeway, Odell, Kelly, Gottesman, Foster, Larsen, DeVries, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.

Yeas: 8 - Nays: 16

Floor Amendment 1011s failed.

The question is on the adoption of Ought to Pass as Amended on SB 343-FN.

Motion of Ought to Pass as Amended adopted, bill ordered to the Committee on Finance (Rule 26).

SB 511-FN, relative to requirements for school building aid grants. Education Committee. Interim Study, Vote 6-0. Senator Fuller Clark for the committee.

SENATOR FULLER CLARK: Yes. Thank you very much, Madam President. I move that Senate Bill 362 [sic] be referred to ...

PRESIDENT LARSEN: Senate Bill 511.

SENATOR FULLER CLARK: 511. Just checking here, okay. A little distracted. Thank you, Madam President. I move that Senate Bill 511- FN be referred to Interim Study. Senate Bill 511 sought to change the criteria for school building aid in order to give greater flexibility to allow for the renovation of existing public school buildings rather than building new. While all older school buildings neither can nor should be saved, many others can become high-performing facilities which can meet the needs of our students for many years to come. There is a value to keeping our schools central to our cities and towns. Current practice prohibits a building renovation from going forward and receiving building aid if it is in excess of 60 percent of the cost of building a new school. While waivers can be applied for, the cost of new buildings is not required to take into account the cost of the land, the cost of extending infrastructure to the

new building, as well as the added expense of busing students further out of town. A community cannot request a waiver for a school renovation, only the local school board can make his request. This has been problematic in some of our cities and towns when competing interests have not agreed on the correct direction. There were many excellent points brought out at the public hearing on this legislation. Because we still have work to do to finalize this initiative, the Education Committee asks that Senate Bill 511-FN be re-referred [sic] to Interim Study and asks for your support. Thank you very much, Madam President.

The question is on the adoption of committee recommendation of Refer to Interim Study on SB 511-FN.

Motion of Refer to Interim Study adopted.

SB 539-FN-L, relative to the cost of an adequate education and provision of fiscal capacity disparity aid. Education Committee. Ought to Pass with Amendment, Vote 4-2. Senator Estabrook for the committee.

Sen. Estabrook, Dist. 21

March 3, 2008

2008-0803s

04/10

Amendment to SB 539-FN-LOCAL

Amend the bill by replacing section 7 with the following:

7 School Money; Fiscal Capacity Disparity Aid. RSA 198:40-c is repealed and reenacted to read as follows:

198:40-c Fiscal Capacity Disparity Aid.

I. In addition to aid for the cost of the opportunity for an adequate education provided under RSA 198:40-b, each fiscal year the department shall provide fiscal capacity disparity aid to a municipality's school districts as follows:

(a) The department of revenue administration shall calculate the equalized valuation per pupil for each municipality in the state and shall sort the results into quartiles based on equalized valuation per pupil. The quartile containing municipalities with the lowest equalized valuation per pupil shall then be divided in half.

(b) A municipality with an equalized valuation per pupil in the lower half of the lowest quartile and which has a median family income which is less than the state average median family income shall receive fiscal capacity disparity aid in the amount of \$2,000 multiplied by the municipality's average daily membership in residence.

(c) A municipality with an equalized valuation per pupil in the upper half of the lowest quartile which has a median family income which is less than the state average median family income shall receive fiscal capacity disparity aid in the amount of \$1,250 multiplied by the municipality's average daily membership in residence.

II. Aid under this section shall be distributed pursuant to RSA 198:42.

III. In this section:

(a) "Equalized valuation per pupil" means a municipality's equalized valuation, including properties subject to taxation under RSA 82 and RSA 83-F, as determined by the department of revenue administration, that was the basis for the local tax assessment in the determination year, divided by the school district's average daily membership in residence, as defined in RSA 189:1-d for the determination year, provided that no kindergarten pupil shall count as more than 1/2 day attendance per calendar day.

(b) "Median family income" means the most recent census data published for New Hampshire counties and municipalities by the United States Census Bureau, United States Department of Commerce, as of October 1 preceding the beginning of the biennium for which aid is to be determined.

2008-0803s

AMENDED ANALYSIS

This bill:

I. Determines the per pupil cost of the opportunity for an adequate education which includes differentiated aid distributed to schools based on the number of pupils receiving special education services, or eligible for a free or reduced-price lunch, or who are English language learners.

II. Requires schools receiving differentiated aid to use it to implement enhanced programs known to improve pupil achievement.

III. Establishes a joint legislative oversight committee on accountability for an adequate education.

IV. Provides fiscal capacity disparity aid, in addition to aid for the cost of the opportunity for an adequate education, based on a municipality's equalized valuation, including utilities, per pupil and median family income.

SENATOR ESTABROOK: Thank you, Madam President. I move Senate Bill 539 ought to pass with amendment. This legislation reflects the long hard work of the Joint Legislative Committee on Costing. I want to thank all members of the Committee, for while we might not have achieved overall consensus, I dare say there was consensus on some important aspects of this proposal, and every member of the committee contributed positively to our work. It was a thorough, data-driven process. SB 539 is a new beginning in the long story of school funding in many ways. First and foremost, it is constitutional. We worked within the constraints of the court's unique ruling to pay first and last dollar of adequacy, and without consideration of property wealth. Instead, we debated educational policy. SB 529 [sic] reflects – excuse me, 39, reflects some significant, new directions in policy. We decided the costs of adequacy should be determined at the school level, since the opportunity for an adequate education is provided at the school level. Our previous emphasis on districts diverted resources from our most challenged schools. And when we looked at schools, we decided that not all schools looked alike, that the costs of adequacy differ from school to school. The research, and the experience of many, was particularly persuasive that high concentrations of economically disadvantaged students in a school present challenges for the entire school population. So, in addition to the universal costs of adequacy in all schools, SB 539 creates differentiated aid, allocated on the basis of the composition of the school's population. And, for the first time, it calls for accountability for the effective use of this State aid.

This bill takes on costing from the perspective of the student's learning environment. It is student-focused and school-focused. It includes all of the costs associated with the definition adopted by the Legislature. Though SB 539 directs resources to our most challenged schools, its distribution results are in many instances a significant departure from the past results. Clearly, the school focus of SB 539 and the change from the heavy, unconstitutional emphasis on property wealth of the current law, to putting property wealth considerations off limits, are the reasons for these disparities. The amendment the Committee adopted creates fiscal disparity capacity aid above adequacy, and this is the most responsible

way to assist communities most harshly affected by the changes and least able to adapt. Though it is an amendment, it is not an afterthought or some cynical diversion as some have suggested. Its creation was present in the introduced SB 539, but its structure takes longer to create, thus the amendment. Further work will certainly continue on this piece of the bill as it moves to the Finance Committee. Overall, this bill shows the seriousness of purpose with which the Joint Legislative Costing Committee undertook its work in a time-pressured environment. It provides a legislative response to our constitutional duty that is thoughtful and sound, and that will move us forward in providing every New Hampshire child with the opportunity for an adequate education. Thank you, Madam President.

(The Chair recognized Sen. Gatsas for a question of Sen. Estabrook.)

SENATOR GATSAS: A series of questions, if I may, Madam President. Senator, I take you to page four of the original bill. And on page four of the original bill, I take you to section (b). And as I read section (b), does that mean that the Department of Education is going to distribute an amount of money to individual schools, in Manchester. Is that what that says?

SENATOR ESTABROOK: No.

SENATOR GATSAS: Well, as I read it, it says, under the fiscal year, RSA 198:42, "The Department shall notify a school district of the total amounts of funds each school within its jurisdiction will receive during the fiscal year based on the sum of the school district's adequate education grant ... plus the amount of available ... of school district from the education property tax."

SENATOR ESTABROOK: I understand what you're saying, because it says each school will "receive" If you would rather, in Finance, change that word "receive" to "have allocated," that's fine. Obviously, the intent here is that the determination of what the school's needs are will be made school by school. The money will still flow to the school district.

SENATOR GATSAS: I was just helping out the work of that ...

SENATOR ESTABROOK: That's what I'm saying. If you'd like to point out that wording –

SENATOR GATSAS: If I take you down to section – using differential aid. Is there a school in Albany?

SENATOR ESTABROOK: I have no idea whether there's a school in Albany. Who represents Albany? I might ask that ... (Laughter)

SENATOR GATSAS: Well, let me help you. Seeing that I've had a little bit of experience with unconstitutional education funding plans.

SENATOR ESTABROOK: Yes, you have. (Laughter)

SENATOR GATSAS: You're right, I have. But at least I understand the scheme of funding. In here, you use an ADMA, which is per child on attendance.

SENATOR ESTABROOK: Yes, sir.

SENATOR GATSAS: On your distribution. There is no school in Albany. How do you plan on distributing the money to 'em?

SENATOR ESTABROOK: If Albany has students but does not operate a school, then that money will be allocated based on where the students

from Albany attend school, and the money will be directed to Albany, with which they can pay the tuition to the district of attendance. We are very fortunate that a few years ago we passed a law creating a "pupil identifier system." And one of the reasons that all of the mathematical work related to this legislation has been delayed a little longer is that that system is just coming on line. But we wanted to wait for it, because what it allows us to do is to track every student from their town of residence to their school of attendance. And we can provide you a 68-page document that shows you where every single student from Albany is, and then we will track that money back to their town for use on their tuition payments.

SENATOR GATSAS: So if I understand your answer, that means the constitutionality of whether we are funding enough of a tuition for Albany to pay to Conway for a tuition grant is certainly going to be another bone of contention from those school districts.

SENATOR ESTABROOK: There doesn't seem any bone of contention. The amount that Albany will receive –

SENATOR GATSAS: Well, not to you.

SENATOR ESTABROOK: – will be based on the school of attendance of Albany students. And that is reflective of all of this work, that where the student attends school, the conditions and the peer group that they are attending school with, determine the level of services necessary to be provided.

SENATOR GATSAS: Thank you.

(The Chair recognized Sen. Barnes for a question of Sen. Estabrook.)

SENATOR BARNES: Sen. Estabrook, I'm going to be asked to vote on this in a couple of seconds. Before I vote, and we went through this previously. I'm voting for my district. Where do I find the numbers of my 12 schools, what they're getting now, under the unconstitutional "Gatsas Plan," which is in place, and what they're going to get if I vote for this bill? Remembering that I have two schools, two towns that are plaintiff towns, Allentown and Pittsfield. So can you somehow read those 12 towns off to me?

SENATOR ESTABROOK: No, Senator, I don't think I'm going to read your 12 towns off or I'll be reading off everybody's towns. The spreadsheets that illustrate how the money will flow have been available for quite some time. And I think that you could have accessed that information quite easily by now.

SENATOR BARNES: But you can't give that to me.

SENATOR ESTABROOK: I certainly can give that to you. I don't think it's appropriate that I do that at this moment.

SENATOR BARNES: Before I vote on this piece of legislation –

SENATOR ESTABROOK: I would hope you would have looked up that information before you vote.

SENATOR BARNES: Well, I would hope you as the ...

SENATOR ESTABROOK: Would you like us to take the Senate's time to have each and every member ask me to reiterate what each of their towns will receive?

SENATOR BARNES: Before they vote on it, they might like to know.

SENATOR ESTABROOK: I don't think that's appropriate subject of debate.

SENATOR BARNES: Before they vote on it, they might like to know, Senator.

SENATOR ESTABROOK: Then they should have made it their business to find out, Senator.

PRESIDENT LARSEN: Questions should go through the Chair.

SENATOR BARNES: Well, that's a little different than I've ever heard in this chamber. Thank you, Senator Estabrook.

SENATOR ESTABROOK: You're welcome.

SENATOR BARNES: Wahoo. Thank you for nothing.

PRESIDENT LARSEN: Questions should go through the Chair, I remind the members.

(The Chair recognized Sen. D'Allesandro to speak.)

SENATOR D'ALLESANDRO: Madam President, if I might. We want civility in this chamber. We want order in this chamber. We want respect for one another in this chamber. If we deviate from that format, then we lose the significance of this body. So let's not have that happen. We've had heavy and hot debate here on many, many issues. Each Senator tries to do their best. Each Senator supplies as much information as is required. Please, let's not lose our sense of civility and respect for one another. We are elected public officials, we're models that people look at. And all of us should know what happens when a public official loses that sense of responsibility, civility, and public input and public service. We've had too many public servants fall off the wagon. Don't let it happen here! Don't lose the respect that each one of us has for one another as we debate these significant issues. They're very important to all of us, they're very important to our constituents. But most important, they are most important to us. Thank you, Madam President.

Recess/Out of recess.

The question is on the adoption of Committee Amendment 0803s to SB 539-FN-L.

A roll call was requested by Sen. Bragdon, seconded by Sen. Gatsas.

The following Senators voted Yes: Gallus, Reynolds, Sgambati, Burling, Cilley, Janeway, Kelly, Bragdon, Gottesman, Foster, Larsen, DeVries, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.

The following Senators voted No: Kenney, Odell, Roberge, Clegg, Gatsas, Barnes, Letourneau.

Yeas: 17 - Nays: 7

Committee Amendment 0803s adopted.

(The Chair recognized Sen. Gatsas to speak.)

SENATOR GATSAS: Thank you, Madam President. Just for the help of my colleague, Sen. Barnes, and I know Sen. Gottesman likes these, I certainly will pass out those spreadsheets so everybody can see them and talk about what we have before us. You'll see that there's certainly a lot of discussion about the constitutionality and constitutional or unconstitutional plans that were in place in the past. I find it interesting, to say the least, that a number comes before us that was very close to a number in the undiscounted amount that came before the Legislature

in 1999. So I guess the constitutionality of this legislation, as they say, is still out on the water. Because as far as I know, no Supreme Court has ruled whether this plan is constitutional or unconstitutional. So this plan is certainly ... is here and is before us, and it's something we should talk about. The plan that we have before us, where it doesn't take property wealth into place, certainly uses property wealth and uses a tax rate. And that tax rate is \$2.14. Let me just explain that that leaves about a \$70 million problem in the first year of the biennium, for the next Legislature to come to. And I understand people are going to say: That's their problem, they got to worry about how to pay for it. But I know that my colleagues on the other side of the aisle have told me consistently, and the Governor has told me consistently that he would veto a bill that had donor towns.

Now, this spreadsheet that you have before you, that comes from the Legislative Budget Office, even at the \$2.14 rate that came out of that committee, has donor towns, to the tune of about \$15 million. But that doesn't fix the \$70 million problem that it creates. The next spreadsheet that you see before you, we gotta fix the problem one way or the other. It's either going to be General Fund dollars or it's going to be increasing the statewide property tax by 20 percent. That increases the donor towns to 25 million. And it increases the statewide property tax to every resident in the State of New Hampshire by 20 percent. So I know that we have an unconstitutional plan on the books, but the last one I give you is the unconstitutional plan if the Governor vetoes this because of donor towns and what the communities will receive. There are no donor towns on it. The wealthy communities lose money, and the poor communities get more money. Now, we can sit here and say: I don't care what happens in the state, I'm only voting for what's in my district. And, you know, funny thing is, I was accused a few years ago of creating a plan that sent an awful lot of money to Manchester. In my wildest dreams I couldn't have created a plan that sent \$61 million to Manchester. In my wildest dreams. However, that number drops very quickly; as soon as the tax rate goes up by 20 percent, that contribution goes down to 55 million. And as soon as we play with the statewide property tax once, there's no reason not to increase it again. So if you want to get rid of donor towns, you can move that statewide property tax to somewhere around \$3, and then you get rid of them. Or no, you increase them. You'd have to drop it down the other way. And if you drop it down the other way, you gotta use more General Fund dollars. Have I had an opportunity to study this plan? I've taken a long time to understand how this plan works. It puts in a "cliff effect" for free and reduced lunch. The same "cliff effect" that Sen. Below sat here some five years ago and changed the funding of free and reduced lunch so people wouldn't fall off that cliff. But we've gone back to the "cliff approach." Why? 'Cause we have to be careful on how we distribute mitigated money. We use property wealth to find out what the floor would be. 'Cause if we didn't, Manchester probably would have received another \$10 million, when you look at how the mitigated dollars were.

So, there are two plans here, there are two different tax rates. The legislation before you doesn't talk about a tax rate. However, this plan has a tax rate. This Legislative Budget Office is the same numbers that were distributed; the only difference is, it says, "Property Tax Estimates for Sen. Gatsas." Twenty percent increase for the statewide property tax to take care of a \$70 million shortfall in revenues to pay for education. We're getting close, folks. We're getting close to not understanding where we're

going with education. The cost is growing and we haven't figured out how we're going to pay for it. Let the next Legislature worry about how we're going to pay for it. So look at the numbers and make a decision. It's about spending. We just heard, a few minutes ago, about opening the budget and spending an additional million dollars for charter schools. This legislation is \$70 million more than what we're spending in a budget, in the last four months we're trying to save 50 million, and next year, we're looking to cut a hundred million. Where does that leave us for the next biennium? I'll leave that up to the people that may be sitting in these seats, because that's a difficult answer, and it's not a burden we should be leaving for somebody else to address. Thank you, Madam President.

(The Chair recognized Sen. Bragdon to speak.)

SENATOR BRAGDON: Thank you, Madam President. Somewhere I have a note that I was going to look at. I intend to not vote for the bill. I did support the amendment. When the bill first came out, I was greatly concerned, 'cause the first thing I do when I look at an education funding plan in the towns in my district, I look at the Town of Greenville, probably the sixth poorest town in the state in terms of property valuation. And when the original bill came out, Greenville lost a million dollars of education aid, while Hollis, two towns away, got an extra million. So it was clear something was very wrong. And I commend the chairman of the Education Committee and those who worked on the amendment, because it certainly helped the situation for the Town of Greenville. They still end up with \$300,000 less than they had currently, but certainly the amendment takes a step in the right direction. However, I'm concerned with some of the math that's in the bill. I suspect the bill will have enough votes today to move on to the Finance Committee. I would just like to speak to the two major concerns that I have, because I think by addressing those concerns we may be able to, without increasing the total costs, allocate some more money to the towns that need it more. One issue is with the use of free and reduced-priced lunch in the calculation of the – what I'll call the “basic aid,” I guess, in the original bill. If a district has over a certain percent of students qualifying for free and reduced-priced lunch, it's indicative of a relatively poorer group of students and the adequacy commission determined, reasonably so, I think, that those students deserve, or that school needs more funds to deal with those students. So if you're over a certain percent of free and reduced-priced students, you get twice as much per student. The theory being that these students need some extra services. The problem is that that “twice as much per student” goes to every student in that school, not just those who are over – who qualify for free and reduced-priced lunch. So I think there's probably, I won't – well, I can't say what phrase I won't use, because then I've used it. But there is some doubling counting there that perhaps by freeing up some of that money can help out some of the other towns a little bit more that are still in a poorer situation. Now, the other thing I have a larger concern with is in the targeting part of the bill, the amendment. And it's these “cliff effects” that Sen. Gatsas just mentioned, with apologies to anybody whose name is “Cliff.” You really have the situation where you're a certain level and then suddenly it jumps up, and then you're at that level and it jumps up again. And a great example of that, and one that causes me probably the most concern, is another town in my district, New Ipswich. Because due to the property values in New Ipswich, they would qualify for an additional \$1.6 million. As it stands right now, I believe they're set to lose about \$500,000, if I recall correctly. Because of their poorer property values,

they're actually eligible for an additional \$1.6 million. However, another factor of that is median family income. The median family income for the state is somewhere around \$57,300. In the Town of New Ipswich, the median family income is \$57,600; about one half of a percent more, about \$300 more per family. Families in New Ipswich tend to have lots of kids, so I suspect that money isn't just floating around somewhere, it's put to good use. Because the average family in New Ipswich makes \$300 more than the state average, they get zero. If they had made \$300 less, it would be \$1.6 million. To go from zero to \$1.6 million, because of a one half of one percent fluctuation in the median family income in the town, I think is really a disservice as well. So I hope the Finance Committee can take some of those things into account, and maybe try and smooth out some of those "cliffs," and maybe take a look at the free and reduced-price allocation as well. Thank you, Madam President.

(The Chair recognized Sen. Gatsas for a question of Sen. Bragdon.)

SENATOR GATSAS: Sen. Bragdon, how old is that number for median family income?

SENATOR BRAGDON: I just looked at it a week ago, so it's a week old, in my opinion. But, that's probably not what you mean. (Laughter)

SENATOR GATSAS: That's a good answer. But wouldn't you agree –

SENATOR BRAGDON: It's better than the real answer, I suspect.

SENATOR GATSAS: Wouldn't you agree that it comes out with the census?

SENATOR BRAGDON: I don't know.

SENATOR GATSAS: And that number is somewhere around nine years old?

SENATOR BRAGDON: Possibly.

SENATOR GATSAS: Thank you.

SENATOR BRAGDON: And if I were in New Ipswich, I might be giving a different number the next time the census-taker comes around.

(The Chair recognized Sen. Kenney to speak.)

SENATOR KENNEY: Thank you, Madam President. I rise in opposition to Senate Bill 539, and I do so in this vein. In that I think that we're – for my district we're turning back the clock. We're turning back the clock where we're re-creating donor-receiver towns. And it's really a frontal assault on my Lakes community, that here we are again, going back to the watering well, to go back to these so-called "rich" communities and to capture their state tax dollars and redistribute them around the state. Now, I just received this spreadsheet for the first time, but I did check WMUR website, and I did look at the numbers a few days ago. And as I tally this, I'm looking between six and seven million dollars that are going to be taken out of my district. Well, I have to tell you that the people in my area – Moultonborough, Tuftonboro, Freedom, Sandwich, Wolfeboro – they're not ready to see an educational plan like this. There are senior citizens there. There are taxpayers there. There are people who are voting on local budgets. And as you know, the economy has flattened out. And suddenly that area of the state, which is technically the second poorest county in the state, is now going to feel the brunt of this educational plan. And I'm concerned that if we do have a situation where we have someone in the corner office who doesn't believe in

donor-receiver towns, who doesn't believe in the statewide property tax, then why are we kidding ourselves. Let's go back to the drawing board. Let's present something that someone is ultimately going to sign into law. I would like to see, someday, in this state, where we look at it from this perspective, that when it comes to general education, that we fund it at the local level. But when it comes to things like catastrophic aid, or reduced and free lunch, and English as second language, that we do that at the state level. Somehow, create a tier system where we fund it at the state level, and general education's funded at the local level. And to me, that's where we need to head. I can't support this plan, Madam President, because frankly, it would create such an impact in my area that the people of my area would not be prepared, and we're rolling back the clock. Thank you.

(The Chair recognized Sen. Letourneau to speak.)

SENATOR LETOURNEAU: Thank you, Madam President. Sen. Kenney, if you think you got a problem, you should live in my district. (Laughter) I rise in opposition of Senate Bill 539. As we all know, this education funding business is very complicated, and finding a solution is at best, challenging and at worst, unattainable. I want to thank the sponsors of this bill for their work on this particular piece of legislation, it's something that we needed to do, and I know that it's a thankless job. However, I believe there's a problem with the formula that in its original form takes resources away from the very communities that we're required to help from the *Claremont II* lawsuits. So much so, that the bill, upon introduction, had to have an amendment that added \$47 million to an already expensive funding plan, thereby creating, upon introduction, those dreaded donor towns. However, even with these additional dollars, the third largest school district in the state loses seven and a half million dollars. While the state's largest and second largest school districts gain an additional \$26 million. The sponsors tell me that this is a constitutional plan. But I ask, is it a moral plan? How can this be? I'm asked by my constituents and school board members how our blue-collar working-class families in Derry, Londonderry, Litchfield, and others who lose millions of indispensable education dollars, will cope with this loss. Let's talk about the impact of seven and a half million dollars of funding to the Town of Derry.

First, seven and a half million dollars represents 31 percent of Derry's total grant dollars. The taxpayers refused to fund it in next year's budget talks because of uncertainty of the economy. What programs do you suggest we cut? Music? Arts? Sports? Computer sciences? Student supplies? Maybe transportation. Please tell me, because they certainly will ask that question of me. And what should I tell them? We all know there's little wiggle room in the discretionary dollars in school budgets. The Derry tax rate is already high at \$27 per thousand in 2006, and a new 100 percent evaluation in 2007. That alone increased my personal tax bill by several thousand dollars, and I'm not alone. Additionally, we are well aware that there is a very soft economy with a record number of mortgage foreclosures and high energy costs for heating and transportation. How many more homeowners will lose their homes with this reduction of funds, bringing an anticipated tax increase to the Town of Derry of \$4.80 per thousand, adding several thousands to each homeowner's tax bill. The falloff on this would be a reduction of home values, because of the high tax rate, and a possible school system with reduced programs. Who's going to buy a home in a town with a downward trend? Economic development would be difficult in that tax climate. And Derry

already suffers from a narrow tax base, and with the economy slowing it down, it could come to a crisis. Derry, along with many of the towns in Southern New Hampshire, stepped up to the plate with bonding of millions of dollars for new schools, and only this week passed a warrant to include kindergarten – I’m sure you’re happy to hear that – and a ... for our younger students. Now we hear that we will lose 31 percent of our grant dollars. I hear grumbling about a new lawsuit. While we can debate this, whether this has any merit or not, we have – we were here, or sent here, to solve this problem. I think that we have awakened a “sleeping giant” with this particular piece of legislation. Thank you, Madam President.

(The Chair recognized Sen. Fuller Clark to speak.)

SENATOR FULLER CLARK: Thank you very much, Madam President. I rise, too, to address Senate Bill 539 education costing legislation. It is important that our constituents, the voters, and the press recognize that the bill before us today is just another important step to create and provide a constitutionally acceptable educational funding plan for New Hampshire. Last year, bipartisan effort required by the courts created a definition of “adequacy,” based for the first time on actual educational standards and objectives; a definition that was passed into law and accepted by the courts. This year, another bipartisan committee in the House and Senate worked hard to craft the legislation that is before us today, again based on sound, educational and eligibility requirements. I think it’s important that we realize, despite the concerns that may rest with the bill as we see it today, that failure to pass this bill out of the Senate will result in the Legislature defaulting on the State’s responsibility to ensure that every child in the state has an opportunity for a quality education. Instead, the courts will step in to run our schools. No one believes that would be the right answer to solve the education funding dilemma in this state, a dilemma that we have been wrestling with at least since the early 1990’s, a dilemma where we have sought time and time again to find a constitutionally acceptable solution. On the other hand, passage of the bill today does not fix every aspect of the bill into law, but merely moves the process forward and prevents the court from taking over the State’s educational responsibilities. Currently, as you have heard from Sen. Kenney, from Sen. Letourneau, and from others, that there are issues that still lie within this bill, and that this bill, to some degree, relies on donor communities, as Sen. Gatsas pointed out, once again. Such communities may indeed be property-rich, as is true in my district. But I also know that many of the residents in these communities, many of these residents who are lifelong residents of these communities, and are the backbone of our communities, cannot bear the burden of ever-increasing property taxes as driven through the state-wide property tax; especially when individuals from these communities and the communities as a whole are being asked to send those monies to communities that don’t need these dollars. That is why I support a constitutional amendment. And that is why Sen. Letourneau and Sen. Kenney, and many other individuals, need to support that constitutional amendment. When you say that we have awakened a “sleeping giant,” or that there is something fundamentally wrong with this plan as put before us, it is because this plan is trying to work within the constraints and confines of what is required by our constitution and what was determined in the *Londonderry* decision. Surely, there must be another way to make these communities whole, especially since, with regard to

donor communities, we are only talking about \$15 million out of a funding program that is close to \$900 million, if not more. Another solution might be to create a constitutionally acceptable abatement plan. But I can tell you here today whatever that final solution may be, I pledge to my constituents and to those of other communities, that I will continue to fight for the elimination of donor communities before this bill becomes law. But I also understand that failure to vote for this bill today will turn our responsibilities over to the courts. We are "between a rock and a hard place," and we need to move forward, but continue to find solutions to some of the concerns that lie within this bill. As I said, the Governor put forth a constitutional amendment. That is one solution. There may be other solutions out there as well. Thank you very much, Madam President.

(The Chair recognized Sen. Kenney for a question of Sen. Fuller Clark.)

SENATOR KENNEY: I have just a question. Thank you, Sen. Fuller Clark, for taking my question. I, too, support a constitutional amendment in redistributing aid. We have been united on this effort in the past, with Mayor Sirrell, yourself, and our communities being a part of the coalition communities. And there is a sense that what we've tried to do in the past is something to eliminate the donor/receiver towns. And I guess my question is, is how did Portsmouth escape from being a donor town, when it's so property-rich?

SENATOR FULLER CLARK: I think it's important to understand that Portsmouth has a very, very high percentage of children who receive free and reduced lunch. And the issue there is that if I were to point out to you, which most people don't believe, but that 48 percent of those people who live in Portsmouth are renters, they are not property owners. So we have inhabitants of Portsmouth who actually are not doing that well, economically. We have a very strong commercial center that is used by all of the outlying communities where the average income is potentially higher. But even in those communities there are people who are having a very difficult time dealing with the high property taxes. But the reason that Portsmouth did not qualify, as I said, as a donor community, is because of that high number of students on free and reduced lunch. We have a very high percentage of families with single parents.

SENATOR KENNEY: Thank you.

(The Chair recognized Sen. Gottesman to speak.)

SENATOR GOTTESMAN: No, I wanted to move the question.

Sen. Gottesman moved the question.

Without objection, the Chair moved to close debate, with further inquiry and speakers remaining to be heard.

(The Chair recognized Sen. Letourneau for a question of Sen. Fuller Clark.)

SENATOR LETOURNEAU: First, I'd like to thank you for making the offer to work with us to try to solve this problem. I do appreciate that, and I am sure that my constituents would. But I rise to ask you the question, it's more a rhetorical than anything else. You mentioned the fact during your presentation of remarks that I should support the constitutional amendment. I want to tell you that the remarks that were made to me, from my people in the community is: If you think that we're going to give them the authority to do what they've just done to us with

this plan, and put it into permanent – into the constitution, you're out of your mind. You probably lost 10,000 votes for a constitutional amendment in Derry, just on this plan alone. Do you believe this?

SENATOR FULLER CLARK: I believe that that could be an issue for your constituents. But I think it's important that we, as policymakers, educate our constituents to understand that the reason that we have this plan is because of the constraints of the constitutional amendment. We are the only state in the country, I believe with the exception of Hawaii, that is required to fund both the first and last dollar of education in this state. If we could not have the obligation for those first dollars, through the constitutional amendment, we would have considerable more money to target to the communities that need those dollars. I do not believe that most voters in this state understand that issue. So I think it's imperative upon all of us to explain to them that this is the very best that the costing committee could do, given the court decisions that had been made up to this point. And it is – the constitutional amendment would reverse those decisions which say that we have to continue to pay the first and last dollar of education for every child in this state.

SENATOR LETOURNEAU: Thank you, Sen. Clark, for those remarks. And I just would remind you that the people on my school board go all the way back to Augenblick, and have very little trust in what we do up here. Thank you.

(The Chair recognized Sen. Gatsas for a question of Sen. Fuller Clark.)

SENATOR GATSAS: Thank you, Madam President. Senator, I know that you probably haven't had the opportunity, other than just – when I passed these out just recently. But wouldn't you agree that if there was a 20 percent increase in the statewide property tax, to take care of the \$70 million of spending, that Portsmouth would become a donor town.

SENATOR FULLER CLARK: That is true. And a number of other communities in the state who were not donor towns would become donor towns.

SENATOR GATSAS: Like Hanover.

SENATOR FULLER CLARK: I believe so. But I'd also like to add to that that there is nothing in this plan that says that we're going to use the statewide property tax to make up that difference. There are other mechanisms that we can continue to address. Now, we have heard in the past that the only way to solve education funding in the state was to pass a sales tax or an income tax. But we are looking at what is basically less than a hundred million dollars as a need that needs to be filled. In the past, I think back to 1999, when we worked day and night and came up with a package so that the State increased its state aid to education, across the state, by hundreds of thousands of dollars. We increased that aid, so we went up to over \$450,000 by a potpourri of individual taxes that raised different amounts of revenue. There is no reason, if we need to do that, to adhere to our obligation to the students of the state that we can't find other revenue sources to fill that hole for the future, other than an income tax, other than a sales tax, and other than a statewide property tax.

SENATOR GATSAS: Follow-up question. Senator, would you believe that it's not a hundred million dollar problem if we eliminate the statewide property tax? Even Sen. D'Allesandro's economic development bill that we'll be discussing in a little bit can't fill a hold of 435 million. So it's not a hundred million that we need to fill. You remove the statewide property tax, it's a \$435 million problem.

SENATOR FULLER CLARK: Sen. Gatsas, you and I disagree on how we look at that \$400 million problem. What we know is that up to 375 million, or 385 million of those dollars are locally raised dollars that stay in those communities; they don't even come to the State. It's just a question of how we choose to name them and use them. And that is something that I believe that we can address. But it is a – it is a bogus tax, when we call that a “statewide property tax,” only to be able to help fulfill the State's obligation, when in reality those dollars never leave the communities where they're raised. But they are raised.

SENATOR GATSAS: Thank you.

(The Chair recognized Sen. Kelly to speak.)

SENATOR KELLY: Thank you, Madam President. I rise in support of SB 539 as amended, and I would like to speak to the bill. I supported this bill as amended out of the Education Committee for the very same reasons that I support it today. I do so because it is good, solid, education policy. It is the first time, since I can remember, that when we addressed the important problem of solving the education funding, that we started with the question, “What is important about education?” I do so, and support this bill, because it is constitutional. We cannot continue to fund education unconstitutionally, unlawfully. As well, I insisted on the fiscal capacity disparity aid in this bill. As I stated in the Education Committee, I will continue to work with the Senate Finance Committee, under the leadership of Sen. D'Allesandro, and present proposed plans. It is my hope that many of the Senators here today – Sen. Odell, Sen. Letourneau, Sen. DeVries, Sen. Sgambati, Sen. Reynolds, many of you – will join me in the discussion in the Finance Committee. Today is just the beginning of solving the education problem. Today is just the beginning of moving SB 539 through the long legislative process before us. And today is a day to vote for a constitutional solution. As well, today is a vote for a policy: a good, strong, viable education policy. It is time to move forward and begin, in a constitutional manner, to solve the educational funding dilemma, with a solid education policy. We all here love our schools. We love the children who are in those schools. I can't go back to my community and talk to them about how to solve this problem without a solid core policy to back up any further discussions that we have. And I urge you to support this bill as amended. Thank you.

(The Chair recognized Sen. Gatsas for a question of Sen. Kelly.)

SENATOR GATSAS: Senator, can you tell me, have you had any conversation with any of the Supreme Court Justices that would have told you this plan was constitutional?

SENATOR KELLY: It is my understanding, going through this process, in the adequacy and the costing committee – and I trust the committee, I've read the report – that this plan goes forward constitutionally.

SENATOR GATSAS: Thank you.

(The Chair recognized Sen. Foster as final speaker on the legislation.)

SENATOR FOSTER: Thank you, Madam President. I stand here today very proud. I was proud two weeks ago when we passed a constitutional amendment in a bipartisan way, which is one solution to this problem. And I stand proud today because we're also moving the situation forward. The plan that we have before us may not be perfect, and there's people who are going to continue to work on it, hopefully, together, on both sides of the aisle, to make it an even better product. But what I know is, it's constitutional, and it meets our responsibility. When I testified on the bill, and when I actually testified on the constitutional

amendment, I said I favored both approaches equally. We have a duty to the constitution, when we're sworn in as Senators, to honor it, to honor that constitution. And I have before us the *Londonderry* Decision. And here's what it says in the second paragraph: "The State appeals the decision of the Superior Court finding that the State has failed to fulfill its duty to define a constitutionally adequate education, failed to determine the cost of an adequate education, and failed to require accountability, and that House Bill 616" – that's the one that Sen. Gatsas was talking about that is currently in effect – "creates a nonuniform tax rate in violation of Part II, Article 5 of the New Hampshire Constitution." The trial court found all those problems with it, four constitutional infirmities. The Supreme Court said: "We affirm the trial court's finding that the State has failed to define a constitutionally adequate education and stay consideration ..." on the remaining findings. Unconstitutional, no definition. Didn't get to the three other things. And they're staying their action right now, because we're moving forward. That's why they haven't acted. They know that there was a costing commission put together and that we're moving forward. They say in the decision: "In *Claremont* we acknowledged the State's assertion that the *Claremont School District v. Governor, Claremont II*, issued four mandates: define an adequate education." We did that. "Determine the cost." We're doing that today. "Fund it with constitutional taxes." We're doing that today. And ensure its delivery through accountability, which is part of the bill and there's going to be more work on that as well. So we're meeting our responsibilities. We're meeting the responsibilities that haven't happened in years and years. And at the end of the decision they write: "For almost thirteen years ..." – guess what, it's now almost fifteen years – "... we have refrained from acting and we continue to refrain today. However, the Judiciary has responsibility to ensure that constitutional rights not be hollowed out and, in the absence of action by other branches, a judicial remedy is not only appropriate but essential." What's that mean? Sometime they've got to act. It's been over a decade, folks. A decade and a half. We haven't done our job. And they say: "We urge the Legislature to act." And we're doing that. And I'm proud of us for doing so. And we're going to work together to make this even a better piece of legislation. Sen. Kelly's right, this is the first step. There's many more steps in the process; it has to go to Finance, it has to go to the other body. There's times to deal with issues like "cliffs." There's time to work out the details. But we can do good work when we're working together. And I urge us to do so and support this plan. Thank you, Madam President.

(The Chair recognized Sen. Gatsas for a question of Sen. Foster.)

SENATOR GATSAS: Senator, I think that you eloquently spoke about the decisions of the Supreme Court and the four mandates that they put upon the State. You addressed the first two, and we've met the first two. The third one, you talked about funding it, and does this plan fund it?

SENATOR FOSTER: This plan puts together an obligation to expend, and we're going to fund it with constitutional taxes. That's what the plan provides. The trust fund taxes, the education trust fund taxes are constitutional taxes. And the other taxes that would be utilized would be constitutional as well.

SENATOR GATSAS: Follow-up. So is the assumption that we could increase the statewide property tax?

SENATOR FOSTER: There's no plan to increase the statewide property tax. Interestingly, yours utilizes the statewide property tax as well, and didn't do so, apparently, in a constitutionally way, according to the

Superior Court. We're trying to find a constitutional way to use those taxes. I think Sen. Clark spoke about ideas that she has, and there's other ideas that I have, so we can utilize that tax in a constitutional way and avoid some of the ramifications of donor towns.

SENATOR GATSAS: Follow-up. Is that going to be presented to this body after it comes out to Finance? Because certainly I wouldn't want you to use an unconstitutional tax that the Court has all ready ruled unconstitutional, that sits in this plan now.

SENATOR FOSTER: Well, it's not – it's not unconstitutional the way it sits in this plan right now. It's unconstitutional the way it sits in your plan, Sen. Gatsas. But there are other ideas about how we can utilize it in a constitutional manner that we're working on. It may well be presented to the Finance Committee and certainly it will be worked on as the matter goes forward.

SENATOR GATSAS: Follow-up. Doesn't it raise the same \$363 million?

SENATOR FOSTER: Oh, it does raise the same \$363 million. Absolutely.

SENATOR GATSAS: Thank you.

The question is on the adoption of Ought to Pass as Amended on SB 539-FN-L.

A roll call was requested by Sen. Gatsas, seconded by Sen. Barnes.

The following Senators voted Yes: Reynolds, Sgambati, Burling, Cilley, Janeway, Kelly, Gottesman, Foster, Larsen, DeVries, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Kenney, Odell, Roberge, Bragdon, Clegg, Gatsas, Barnes, Letourneau.

Yeas: 15 - Nays: 9

Motion of Ought to Pass as Amended adopted, bill ordered to Committee on Finance (Rule 26).

PARLIAMENTARY INQUIRY

SENATOR KENNEY: If the Governor were to veto this particular plan, Madam President, what would it take to override his veto, as far as votes?

PRESIDENT LARSEN: This bill is going to the Senate Finance Committee after which it goes to the House. At this point it is too early to anticipate a veto; however, a veto override always requires a two-thirds vote of the Senate. Sixteen votes.

SB 359, updating the health curriculum requirements for public school students. Education Committee. Ought to Pass with Amendment, Vote 5-0. Senator Foster for the committee.

Senate Education

March 10, 2008

2008-0946s

04/09

Amendment to SB 359

Amend the title of the bill by replacing it with the following:

AN ACT updating the health curriculum requirements for public school students and requiring the state board of education to provide for procedures through which students may be excused from course requirements relating to health and sex education on religious grounds without penalty.

Amend the bill by inserting after section 3 the following and renumbering the original sections 4-5 to read as 5-6, respectively:

4 New Paragraph; State Board of Education; Duties. Amend RSA 186:11 by inserting after paragraph IX-a the following new paragraph:

IX-b. HEALTH AND SEX EDUCATION. Provide for procedures through which students may be excused from course requirements relating to health and sex education on religious grounds without penalty.

2008-0946s

AMENDED ANALYSIS

This bill updates the health education curriculum to include instruction on the effects of alcohol and other drugs, child abuse, human immunodeficiency virus (HIV)/acquired immunodeficiency syndrome (AIDS), and sexually transmitted diseases on the human system. The bill also requires the state board of education to provide for procedures through which students may be excused from course requirements relating to health and sex education on religious grounds without penalty.

SENATOR FOSTER: Thank you, Madam President. I move ought to pass with amendment on Senate Bill 359. This legislation updates language adopted in 1921 which dealt with the health curriculum in public schools. It is necessary to include such terms as "child abuse" and how children should deal with potential sexual predators. The Committee wants to be totally clear that the statute does not dictate what must be taught; the state Board of Education will provide curriculum frameworks. Each local school board would decide how they wish this framework to be taught locally. The committee amendment provides that the state Board of Education shall provide an "opt out" for parents who wish that their children not participate on religious grounds without penalty. Testimony received at the public hearing indicate that all school districts do not currently allow this option. The Education Committee recommends that Senate Bill 359 be adopted as amended and asks for your support. Thank you, Madam President.

The question is on the adoption of Committee Amendment 0946s. Committee Amendment 0946s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 359.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 362, relative to the responsibility for providing a free appropriate public education to students with disabilities. Education Committee. Interim Study, Vote 4-1. Senator Fuller Clark for the committee.

SENATOR FULLER CLARK: Thank you very much ...

PRESIDENT LARSEN: Senate Bill 362.

SENATOR FULLER CLARK: Thank you. I think I just tore up those remarks. (Laughter) Here we go. I move that Senate Bill 362 be rereferred [sic] to Interim Study. Senate Bill 362 is another charter school bill received this session that we feel is emblematic of the larger problem we are currently dealing with, and for that reason it's important that this bill go to interim study along with the other bills that we are looking at to address all of the concerns that are raised with regard to funding charter schools. Thank you, Madam President. I hope that the Senate will support us in the move of interim study.

The question is on the adoption of committee recommendation of Refer to Interim Study on SB 362.

Motion of Refer to Interim Study adopted.

Sen. Letourneau is in opposition to the motion of Refer to Interim Study on SB 362.

SB 374, relative to the process for nonrenewal of teacher contracts. Education Committee. Ought to Pass with Amendment, Vote 4-1. Senator Estabrook for the committee.

Senate Education

March 10, 2008

2008-0943s

04/09

Amendment to SB 374

Amend the bill by replacing all after the enacting clause with the following:

1 School Boards; Review by State Board. Amend RSA 189:14-b, I to read as follows:

1. A teacher aggrieved by such decision may ~~[request]~~ *either petition* the state board of education for review thereof *or request arbitration under the terms of a collective bargaining agreement, if applicable, but may not do both.* Such ~~[request]~~ *petition* must be in writing and filed with the state board within 10 days after the issuance of the decision to be reviewed. Upon receipt of such ~~[request]~~ *petition*, the state board shall notify the school board of the ~~[request]~~ *petition* for review, and shall forthwith proceed to a consideration of the matter. Such consideration shall include a hearing if either party shall request it. The state board shall issue its decision within ~~[30]~~ *15* days after the ~~[request]~~ *petition* for review is filed, and the decision of the state board shall be final and binding upon both parties. ~~[A request for review under this section shall constitute the exclusive remedy available to a teacher on the issue of the nonrenewal of such teacher.]~~

2 Public Employee Labor Relations; Grievance Procedures. Amend RSA 273-A:4 to read as follows:

273-A:4 Grievance Procedures. Every agreement negotiated under the terms of this chapter shall be reduced to writing and shall contain workable grievance procedures. ~~[No grievance resulting from the failure of a teacher to be renewed pursuant to RSA 189:14-a shall be subject to arbitration or any other binding resolution, except as provided by RSA 189:14-a and RSA 189:14-b. Any such provision in force as of the effective date of this section shall be null and void upon the expiration date of that collective bargaining agreement.]~~

3 Effective Date. This act shall take effect 60 days after its passage.

SENATOR ESTABROOK: Thank you, Madam President. Since I haven't had enough controversy today, I move Senate Bill 374 ought to pass with amendment. This legislation sought to change the procedures related to nonrenewal of a teacher contract. The committee amendment returns collective bargaining – rights gained through collective bargaining for binding arbitration of a nonrenewal, a right that was taken away from teachers in past legislative sessions. The committee members were not, however, supportive of changing the standard of review for appeal to the state Board of Education, and deleted this section from the bill. The amendment also adds a “no two bites of the apple” provision, allowing

binding arbitration or state board appeal, but not both. The Education Committee recommends that SB 374 be adopted as amended and asks your support. Thank you.

The question is on the adoption of Committee Amendment 0943s. Committee Amendment 0943s adopted.

(The Chair recognized Sen. Bragdon to speak.)

SENATOR BRAGDON: Thank you, Madam President. I rise, strangely enough, as a school board member in support of this bill. I know, Sen. Estabrook, you're shocked. As am I. As a school board member for nigh on twelve years, and a chairman for ten; I keep trying to get other people to be chairman, but they chicken out at the last minute. So I was very distressed to find that my contracts with my unions, with "our" unions, having binding arbitration in them. Because, from a management perspective, I don't like it, plain and simple. But you know what, it was negotiated into the contract. And when you negotiate a contract, one side gives up something to get what they want. So at some point in the past, I sure hope they got a lot out of that pesky teachers' union to get binding arbitration in the contract. But I wasn't in the Legislature in the year when they repealed that. And had I been there, I would have been one of the few in my party, probably, to vote against it, because my feeling is, it was negotiated at the local level, it was in the contract, and it really isn't the position of the State to say: No, you can't do that anymore, or really, it's not the position of the State to say: Okay, you have to do it this way. It's for the parties to negotiate. So, as much as I would love to see it disappear from my contracts, I really don't think it's the fair thing to do, and so I will be supporting this bill.

The question is on the adoption of Ought to Pass as Amended on SB 374.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 538, relative to the community college system of New Hampshire board of trustees and repealing a motor vehicle regulation statute applicable to the community college system. Education Committee. Ought to Pass with Amendment, Vote 5-0. Senator Kelly for the committee.

Senate Education

March 10, 2008

2008-0941s

04/01

Amendment to SB 538

Amend the bill by inserting after section 2 the following and renumbering the original sections 3-4 to read as 4-5, respectively:

3 Community College System of New Hampshire; Board of Trustees. Amend RSA 188-F:4, II(k) to read as follows:

(k) One member ~~representing a~~ **from the** technology ~~[company]~~ **sector.**

Amend the bill by replacing section 5 with the following:

5 Effective Date. This act shall take effect upon its passage.

SENATOR KELLY: Thank you, Madam President. I move SB 538 ought to pass with amendment. This legislation was requested by the Community College System in order to address a couple of issues that have come up as their self-governance legislation is put into place. This legislation

provides additional members of the board of trustees in order to provide adequate coverage on their standing committee. The legislation provides autonomy over the acquisition and use of vehicles, the same as other independent entities. This flexibility will permit the Community College System to be able to purchase used vehicles instead of new ones and/or purchase alternative-fuel vehicles. The committee amendment makes parallel the language in their board regarding the member who represents the technology sector. The Education Committee recommends that SB 538 be adopted as amended and asks for your support. Thank you.

The question is on the adoption of Committee Amendment 0941s.

Committee Amendment 0941s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 538.

Motion of Ought to Pass as Amended, bill ordered to Third Reading.

SB 386, relative to service territories served by several telephone utilities. Energy, Environment and Economic Development Committee. Ought to Pass, Vote 4-1. Senator Fuller Clark for the committee.

SENATOR FULLER CLARK: Thank you, Madam President. I move Senate Bill 386 ought to pass. This bill expands the exceptions that permit a telephone utility to furnish service to premises within the service territory of another telephone utility. Rural telephone companies are exempt from competition under Section 251(f)(1) of the Communications Act of 1934. Cable companies can not offer competitive phone service in areas served by rural telephone companies as defined in federal law. There is a process set forth in the rural exemption section whereby a cable company or other competitive telephone provider may engage a regulatory process at the PUC to qualify to serve areas otherwise off limits. New Hampshire has additional implementations that prevent cable companies from requesting this process at the PUC. Senate Bill 386 would allow competitive providers to commence the regulatory process if the incumbent has been granted alternative regulation status or the new provider can prove that the means to provide a competitive service already exists. If the PUC finds that competition is not economically burdensome on the incumbent, and is technically feasible, then the rural exemption would no longer apply. Senate Bill 386 maintains the protections afforded to rural companies under current law. This legislation simply will help to clear an unnecessary regulatory hurdle and will support consumer choice. Please join the Energy, Environment and Economic Development Committee and vote ought to pass. Thank you, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on SB 386.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 394, establishing an economic development advisory council. Energy, Environment and Economic Development Committee. Ought to Pass with Amendment, Vote 5-0. Senator Hassan for the committee.

Sen. Hassan, Dist. 23

March 4, 2008

2008-0836s

05/10

Amendment to SB 394

Amend RSA 12-A:22-a, II as inserted by section 1 of the bill by replacing it with the following:

II. The advisory council shall consist of the director of the division of economic development, 3 at-large members who have an interest in economic development, and a representative of each of the following:

- (a) A chamber of commerce.
- (b) The manufacturing sector.
- (c) The higher education field.
- (d) A venture capital formation expert or specialist.
- (e) A workforce development organization.
- (f) The biotechnology sector.
- (g) The information technology or software sector.
- (h) Commercial real estate or development.
- (i) A regional or municipal development official.
- (k) The insurance, banking, or financial services sector.
- (l) The retail, travel, and tourism sector.
- (m) The forest-based products sector.
- (n) An electric utility or energy related interest.
- (q) An economist.
- (r) A telecommunications sector representative.
- (s) The governor's office.
- (t) A senator, appointed by the president of the senate.
- (u) A house member, appointed by the speaker of the house of representatives.
- (v) One representative of organized labor.

SENATOR HASSAN: Thank you, Madam President. I move Senate Bill 394 ought to pass with amendment. This bill was introduced at the request of the Department of Resources and Economic Development and will serve as a means to bring all stakeholders together to share information. The Economic Development Advisory Council created by this legislation will provide a forum for the private sector to advise the Division of Economic Development of trends and needs, and will help disseminate information among public and private sector units. The committee amendment addresses the advisory council's membership and simply refers to categories of members rather than naming specific organizations. Please join the Energy, Environment and Economic Development Committee and vote ought to pass with Amendment. And, Madam Chair, I note after that I'll have a floor amendment to offer as well. Thank you.

The question is on the adoption of Committee Amendment 0836s on SB 394.

Committee Amendment 0836s adopted.

Sen. Hassan offered a floor amendment.

Sen. Hassan, Dist. 23

March 13, 2008

2008-1019s

05/04

Floor Amendment to SB 394

Amend RSA 12-A:22-a, II as inserted by section 1 of the bill by inserting after subparagraph (v) the following new subparagraphs:

- (w) The building community.
- (x) A state or local housing agency.

Amend RSA 12-A:22-a, III as inserted by section 1 of the bill by replacing it with the following:

III. Members of the council, except for the legislative members, shall be nominated by the commissioner of the department of resources and economic development and appointed by the governor for a term of 3 years and until their successors are appointed and qualified. Initial appointments made by the governor shall be for staggered terms of one, 2, or 3 years.

SENATOR HASSAN: Thank you, Madam President. I'd like to speak to Amendment 1019s as it's being passed around.

PRESIDENT LARSEN: You may proceed.

SENATOR HASSAN: Thank you. This amendment adds two different – additional categories of membership to this advisory council, a member to be appointed by – nominated by the Commissioner of DRED and appointed by the Governor from the building community and also from a state or local housing agency. And in addition, this member staggers – this amendment staggers the membership of the advisory council so that not all of the member – the terms will turn over at the same time. I urge my fellow Senators to support the amendment. Thank you.

The question is on the adoption of Floor Amendment 1019s.

Floor Amendment 1019s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 394.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 412, establishing the office of technology development and telecommunications planning and the position of director of telecommunications in the department of resources and economic development. Energy, Environment and Economic Development Committee. Ought to Pass, Vote 3-2. Senator Hassan for the committee.

MOTION TO TABLE

Sen. Hassan moved to have SB 412 laid on the table.

Motion adopted.

LAID ON THE TABLE

SB 412, establishing the office of technology development and telecommunications planning and the position of director of telecommunications in the department of resources and economic development.

SB 368, relative to exemptions for toxics reduction in packaging. Energy, Environment and Economic Development Committee. Ought to Pass, Vote 5-0. Senator Odell for the committee.

SENATOR ODELL: Thank you, Madam President. I move Senate Bill 368 ought to pass. New Hampshire's current toxics-in-packaging law is based on model legislation sponsored by the Toxics in Packaging Clearinghouse. Senate Bill 368 will extend an exemption for vitrified labels in toxics reduction packaging, but excludes mercury. New Hampshire's current law is consistent with 18 other state's laws and restricts the use of lead, cadmium, mercury and hexavalent chromium in packaging, because these toxic metals contaminate the solid waste stream and end up in landfills and incinerator emissions. Passing Senate Bill 368 will ensure that New Hampshire's toxics-in-packaging law will remain current and relevant. This legislation will also ensure consistency with the model legislation,

which will make it easier for the industry to comply. Please join the Energy, Environment and Economic Development Committee and vote ought to pass. Thank you, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on SB 368.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

Sen. Hassan presiding.

SB 382, relative to gasoline and diesel fuel prices. Energy, Environment and Economic Development Committee. Inexpedient to Legislate, Vote 5-0. Senator Cilley for the committee.

SENATOR CILLEY: Thank you, Madam President. I move SB 382 inexpedient to legislate. This bill would've prohibited retail sellers of gasoline and diesel fuel from using fractional cent pricing. The bill would also establish the unit of measure for gasoline and diesel fuel to be the temperature-adjusted gallon and would direct the Department of Environmental Services to determine the size of a temperature-adjusted gallon in New Hampshire. Failure to comply with the temperature-adjusted gallon requirement would be a violation. The Committee received testimony that this issue has been debated at the national level for some time and that if the issue is to be addressed, it would be more appropriate that the federal government settle on a policy that would be consistent throughout the states relative to the temperature-adjusted gallons. Other information that we received at the – during testimony, discussed just how difficult this would be to implement. The cost, for example, of \$2,000 a pump for our gasoline station owners. And so in that light, please join the Energy, Environment and Economic Development Committee and vote inexpedient to legislate. Thank you.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on SB 382.

Motion of Inexpedient to Legislate adopted.

SB 384, relative to the repair of septic systems prior to the sale of waterfront property. Energy, Environment and Economic Development Committee. Ought to Pass with Amendment, Vote 5-0. Senator Sgambati for the committee.

Sen. Sgambati, Dist. 4

March 3, 2008

2008-0798s

08/09

Amendment to SB 384

Amend the bill by replacing all after the enacting clause with the following:

1 Sale of Waterfront Property; Department Notification. Amend RSA 485-A:39 to read as follows:

485-A:39 Waterfront Property Sale; Site Assessment Study.

I. Prior to the execution of a purchase and sale agreement for any developed waterfront property using a septic disposal system, the owner of the property shall, at ~~his or her~~ **the owner's** expense, engage a permitted subsurface sewer or waste disposal system designer to perform a site assessment study to determine if the site meets the current standards for septic disposal systems established by the department. The site assessment study shall include an on-site inspection **and shall identify**

any remedial action required to meet the department's current standards for septic disposal systems and if the system is failing, the action necessary to bring the system into compliance. If the site assessment is not complete prior to the time that the buyer and seller enter into a purchase and sale contract, the contract shall be subject to the buyer's acceptance of the completed site assessment.

II. The site assessment study form shall become a part of the purchase and sale agreement.

III. The site assessment study form, with stated findings, shall be given to the buyer **and the seller** and receipt of the form shall be acknowledged in writing by the buyer **and the seller**.

IV. Failure of the seller or the seller's agent to notify the buyer of the findings or deliver ~~[approved plans of the septic disposal system]~~ **the completed site assessment study form** pursuant to paragraph III of this section shall be a violation and, notwithstanding RSA 651:2, shall be punishable by a fine not to exceed \$500.

V. The site assessment study shall consist of 3 sections:

(a) Section A shall include the name, address, and telephone number of the seller and the seller's agent and the location and a brief description of the property, including the tax map reference and lot number.

(b) Section B shall include the lot size, slope, loading (based on the number of bedrooms in the structure), water source, soil type, and estimated seasonal high water table information from U.S. Natural Resources Conservation Service maps. A space shall be included on the form for the permitted designer to write his assessment of the site for the current use of the system, based upon the criteria and information required in this subparagraph.

(c) Section C shall include information about the present septic disposal system, if available. If the installed system was approved by the department, a copy of the approval form, approval number and plan shall be attached to the site assessment study.

~~[An assessment indicating that the site fails to meet any of the criteria established under this section shall not prohibit the sale of the property but must be disclosed to the buyer as full and proper notice of the possible limitations of the site for a septic disposal system.]~~

VI. The department shall design the site assessment form pursuant to paragraph V of this section. The commissioner shall adopt rules pursuant to RSA 541-A relative to the procedures for the availability and distribution of the form to interested parties.

VII. An assessment indicating that the site fails to meet any of the criteria established under this section shall not prohibit the sale of the property but shall be disclosed to the buyer as full and proper notice of the possible limitations of the site for a septic disposal system.

VIII. If the septic disposal system designer, during the course of a site assessment, discovers evidence that a system is in failure, the designer shall notify, in writing, the department and the local health officer, and shall include that information in the site assessment report.

IX. If no state-approved plan exists for the property, or the approved plan cannot be located, the assessor shall perform a standard dye test on the septic disposal system. Surfacing of the dye on the ground or in nearby surface waters shall be an indication of failure, and the assessor shall report that failure as provided in paragraph VIII.

2 Septic System Failure; Definition. Amend RSA 485-A:2, IV to read as follows:

IV. "Failure" means the condition produced when a subsurface sewage or waste disposal system does not properly contain ~~or treat~~ sewage or causes ~~or threatens to cause~~ the discharge of sewage on the ground surface or into adjacent surface ~~or groundwaters~~ **waters**.

3 Developed Waterfront Property; Definition. Amend RSA 485-A:2, I to read as follows:

I. "Developed waterfront property" means any parcel of land which is contiguous to or within 200 feet of ~~tidal waters or a great pond~~ **public waters** as defined in ~~RSA 4:40-a~~ **RSA 483-B** and upon which stands a structure suitable for either seasonal or year-round human occupancy.

4 Permit Renewal; Septic Designers. Amend RSA 485-A:35, I to read as follows:

I.(a) All applications, plans, and specifications submitted in accordance with this chapter for subsurface sewage or waste disposal systems shall be prepared and signed by the person who is directly responsible for them and who has a permit issued by the department to perform the work. The department shall issue a permit to any person who applies to the department, and pays a fee of ~~[\$40]~~ **\$80** and who has demonstrated a sound working knowledge of the procedures and practices required in the site evaluation, design, and operation of subsurface sewage or waste disposal systems. The department shall require an oral or written examination or both to determine who may qualify for a permit. Permits shall be issued from January 1 and shall expire December 31 of ~~each~~ **every other** year. Permits shall be renewable upon proper application, ~~and payment of an annual fee of \$40~~ **payment of a biennial fee of \$80, and documentation of compliance with the continuing education requirement of subparagraph (b)**. A permit issued to any person may be suspended, revoked or not renewed only for just cause and after the permit holder has had a full opportunity to be heard by the department. An appeal from a decision to revoke, suspend or not renew a permit may be taken pursuant to RSA 541.

(b) Permitted designers shall complete a minimum of 3 hours annually of continuing education approved by the department.

5 Permit Renewal; Septic Installers. Amend RSA 485-A:36, I to read as follows:

I.(a) No person shall engage in the business of installing subsurface sewage or waste disposal systems under this subdivision without first obtaining an installer's permit from the department. The permit holder shall be responsible for installing the subsurface sewage or waste disposal system in accordance with the intent of the approved plan. The department shall issue an installer's permit to any person who submits an application provided by the department, pays a fee of ~~[\$40]~~ **\$80** and demonstrates a sound working knowledge of RSA 485-A:29-35 and the ability to read approved waste disposal plans. The department shall require an oral or written examination or both to determine who may qualify for an installer's permit. Individuals who have been actively engaged in the business of installing systems for at least 12 months prior to January 1, 1980, shall not be required to submit to such examination, but shall be issued a permit upon filing an application and paying the initial fee, if application is made before June 30, 1980. Permits shall be issued from January 1 and shall expire December 31 of ~~each~~ **every other** year. Permits shall be renewable upon proper application ~~and payment of an annual fee of \$40~~ **payment of a biennial fee of \$80,**

and documentation of compliance with the continuing education requirement of subparagraph (b). The installer's permit may be suspended, revoked or not renewed for just cause, including, but not limited to, the installation of waste disposal systems in violation of this subdivision or the refusal by a permit holder to correct defective work. The department shall not suspend, revoke or refuse to renew a permit except for just cause until the permit holder has had an opportunity to be heard by the department. An appeal from such decision to revoke, suspend or not renew a permit may be taken pursuant to RSA 21-O:14. All fees shall be deposited with the state treasurer as unrestricted revenue.

(b) Permitted installers shall complete a minimum of 3 hours annually of continuing education approved by the department.

6 Effective Date. This act shall take effect January 1, 2009.

2008-0798s

AMENDED ANALYSIS

This bill:

I. Requires a site assessment study to identify remedial actions necessary.

II. Adds a section to the site assessment study.

III. Requires a septic disposal system designer to report remedial actions to the department of environmental services and the local health officer.

IV. Defines "developed waterfront property" and septic system "failure." Prescribes continuing education requirements for septic system designers and installers.

MOTION TO TABLE

Sen. Sgambati moved to have SB 384 laid on the table.

Motion adopted.

LAID ON THE TABLE

SB 384, relative to the repair of septic systems prior to the sale of waterfront property.

SB 420, relative to criminal background checks of health care facilities. Executive Departments and Administration Committee. Ought to Pass with Amendment, Vote 4-0. Senator Cilley for the committee.

Senate Executive Departments and Administration

March 6, 2008

2008-0885s

01/09

Amendment to SB 420

Amend the title of the bill by replacing it with the following:

AN ACT relative to criminal background checks of health care facilities and certain nurse applicants.

Amend the bill by replacing all after section 2 with the following:

3 Nurse Practice Act; Criminal History Record Check. Amend RSA 326-B:15, II and III to read as follows:

II. ~~[The]~~ **An applicant for licensure as an RN or an LPN shall also** submit with the release form a complete set of fingerprints taken by a qualified law enforcement agency or an authorized employee of the department of safety. In the event that the first set of fingerprints is invalid due

to insufficient pattern, a second set of fingerprints shall be necessary in order to complete the criminal history records check. If, after 2 attempts, a set of fingerprints is invalid due to insufficient pattern, the board may, in lieu of the criminal history records check, accept police clearances from every city, town, or county where the person has lived during the past 5 years.

III. The board shall submit the criminal history records release form and *if applicable the fingerprint form* to the division of state police ~~[which]~~. *The division of state police shall conduct a criminal history records check on all applicants through its records and for applicants for licensure as LPNs or RNs shall also conduct a criminal records check* through the Federal Bureau of Investigation. Upon completion of the records check, the division of state police shall release copies of the criminal history records to the board. The board shall maintain the confidentiality of all criminal history records information received pursuant to this section.

4 Nurse Practice Act; Criminal History Record Check. RSA 326-B:15, II and III is repealed and reenacted to read as follows:

II. The applicant shall submit with the release form a complete set of fingerprints taken by a qualified law enforcement agency or an authorized employee of the department of safety. In the event that the first set of fingerprints is invalid due to insufficient pattern, a second set of fingerprints shall be necessary in order to complete the criminal history records check. If, after 2 attempts, a set of fingerprints is invalid due to insufficient pattern, the board may, in lieu of the criminal history records check, accept police clearances from every city, town, or county where the person has lived during the past 5 years.

III. The board shall submit the criminal history records release form and fingerprint form to the division of state police which shall conduct a criminal history records check through its records and through the Federal Bureau of Investigation. Upon completion of the records check, the division of state police shall release copies of the criminal history records to the board. The board shall maintain the confidentiality of all criminal history records information received pursuant to this section.

5 Contingency. Section 4 of this act shall take effect 30 days after the date of certification by the director of the division of state police to the secretary of state and the director of legislative services that the division of state police is able to begin carrying out the responsibilities set forth under RSA 326-B:15, II and III as inserted by section 4 of this act; provided, that such certification shall be provided no later than March 1, 2009.

6 Effective Date.

I. Section 4 of this act shall take effect as provided in section 5 of this act.

II. Sections 1 and 2 of this act shall take effect January 1, 2009.

III. The remainder of this act shall take effect upon its passage.

2008-0885s

AMENDED ANALYSIS

This bill requires every applicant applying for a license to operate a health care facility to submit with the application the results of a criminal records check for the applicant, the licensee, or certificate holder if different than the applicant, the administrator, and each household member, if applicable. Current law only requires residential facilities and home health care agencies to comply with such a law.

This bill also requires only those applicants applying for licensure as an LPN or RN to submit a set of fingerprints and to undergo a criminal history records check through the Federal Bureau of Investigation in addition to the state criminal history records check for a limited period of time. Current law requires all applicants for licensure under RSA 326-B to submit a set of fingerprints and to undergo both criminal history records checks.

SENATOR CILLEY: Thank you, Madam President. I move Senate Bill 420 ought to pass with amendment. This bill requires every applicant applying for a license to operate a healthcare facility, to submit the application – to submit with the application the results of criminal records check for the applicant, the licensee, or certificate holder if different from the applicant; also the administrator and each household member, if applicable. The current law only requires residential facilities and home healthcare agencies to comply with such laws. So this makes the requirements consistent across all providers. The amendment was worked on together and resolves all issues – all issues, all the way around, which amends the law effective immediately, so as to make only RN's and LPN's subject to the fingerprint based upon FBI checks. The current law is put back into effect as soon as the State Police have the capabilities in place to carry out the requirements of the law. Please join the ED&A Committee in ought to pass with amendment. Thank you, Madam President.

The question is on the adoption of Committee Amendment 0885s.

Committee Amendment 0885s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 420.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 453, relative to the terms of members of the electricians' board. Executive Departments and Administration Committee. Ought to Pass with Amendment, Vote 4-0. Senator Kenney for the committee.

Senate Executive Departments and Administration

March 5, 2008

2008-0870s

08/09

Amendment to SB 453

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraph; Electricians' Board; Term Limits. Amend RSA 319-C:4 by inserting after paragraph I the following new paragraph:

I-a. No member of the board shall serve more than 12 years, including the time of 2 5-year terms, being held over after a term expires, and fulfilling an unexpired term. Members' terms shall be staggered and in no case shall any member's term coincide with another member's term. To avoid coinciding terms, the next appointment for a member shall be for a term which complies with this paragraph.

2 Effective Date. This act shall take effect 60 days after its passage.

2008-0870s

AMENDED ANALYSIS

This bill imposes term limits on the terms of members of the electricians' board.

This bill also requires that no board member's term coincides with another member's term.

SENATOR KENNEY: Thank you, Madam President. I move Senate Bill 453 ought to pass with amendment. This bill imposes term limits on terms of members of the electricians' board. The amendment staggers the terms for all five members of the board membership, and would provide stronger continuity overall. The Electrical Contractors' Business Association is in support of the bill and the amendment. Please join the ED&A Committee, ought to pass with amendment. Thank you, Madam President.

The question is on the adoption of Committee Amendment 0870s. Committee Amendment 0870s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 453.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 536-FN, reclassifying certain positions in the insurance department. Executive Departments and Administration Committee. Ought to Pass, Vote 4-0. Senator Downing for the committee.

SENATOR DOWNING: Thank you, Madam President. I move Senate Bill 536-FN ought to pass. This bill changes certain classified positions to unclassified positions. The grade levels requested will have to be brought before the joint committee for oversight. It is in accordance with the Insurance Department's restructuring plan. This bill was requested by the Insurance Department. We ask you to please join the ED&A Committee in ought to pass.

The question is on the committee recommendation of Ought to Pass on SB 536-FN.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 346-FN, relative to the regulation of fuel gas fitters by the state fire marshal. Finance Committee. Ought to Pass, Vote 6-0. Senator Gallus for the committee.

SENATOR GALLUS: Thank you, Madam Chair. I move SB 346 ought to pass. This bill makes changes to the regulation of fuel gas fitters by the state Fire Marshal. The changes include the issuance of a fuel gas fitting license at a cost of a hundred dollars per year. It is estimated that \$60,000' worth of restricted revenue will result from collection of the licensing fee. This revenue will be deposited into a restricted account, the Fire Standards and Training and Emergency Medical Services Fund. The state Fire Marshal is supportive of this measure, and has indicated that the revenue generated from the licensing fee will cover all administrative costs associated with the changes that will be implemented with this legislation. The Finance Committee asks your support for the motion of ought to pass. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on SB 346-FN.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 348-FN, relative to the certification of forensic counselors by the board of forensic counselors. Finance Committee. Interim Study, Vote 6-0. Senator Sgambati for the committee.

MOTION TO TABLE

Sen. Sgambati moved to have SB 348-FN laid on the table.

Motion adopted.

LAI D ON THE TABLE

SB 348-FN, relative to the certification of forensic counselors by the board of forensic counselors.

SB 351-FN, requiring that funds in the civil legal services fund be distributed to New Hampshire Legal Assistance to establish an office at a location in Carroll county. Finance Committee. Inexpedient to Legislate, Vote 5-1. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you, Madam President. I move Senate Bill 351 inexpedient to legislate. This bill would require that the money for the Civil Legal Services Fund, which currently funds legal assistance offices in Concord and Nashua, be used to open a new legal assistance location in Carroll County. There simply isn't enough money in this fund to support the costs associated with opening another legal assistance office. Individuals from Carroll County can receive legal assistance from the existing locations. The Finance Committee cannot recommend passage of this bill, as it would deplete the money in the fund that's needed to keep the two existing offices in operation. The Finance Committee asks your support for the motion of inexpedient to legislate. Thank you, Madam President.

(The Chair recognized Sen. Kenney to speak.)

SENATOR KENNEY: Thank you, Madam President. This is a bill that's been near and dear to me over the last several years. There is a need for Carroll County to have a New Hampshire Legal Assistance Office. I don't think anyone can really argue that. There's been a lot of support from the Executive Director of the New Hampshire Legal Assistance Office, there has been support from the county attorney, there's been support from the child advocacy in Carroll County. And there is a great need based off of the distance factor. The legal assistance office that is in Portsmouth and the one that is – the other closest one is Littleton. It's approximately about a hundred and forty miles from Portsmouth to Littleton and in between is Carroll County. Much like the full-service hospitals that we want for veterans, the argument has been accessibility. So it's transportation for our citizens in Carroll County who don't have direct access to legal assistance. And that's why I brought the bill forward. And the Executive Director has assured me, from the New Hampshire Legal Assistance, that they will pursue other types of funding to try to bring forward a particular legal assistance office in Carroll County. Legal assistance – New Hampshire Legal Assistance provides four immediate things that our area needs, and other areas need as well: landlord disputes; public assistance; custody conflict, and Social Security help for our senior citizens. And, as you know, the present locations around the state are in Berlin, Claremont, Concord, Littleton, Manchester and newly put into Nashua and Portsmouth. And there's also an executive office in Manchester. And I'm not gonna break down the staff, but I have a listing of all the staff and the paralegals that are distributed among those offices. We, in state government, got involved in 1997 when we gave \$200,000 to the office in Berlin. When we created a Civil Legal Service Fund in 2005, we put \$700,000 into the Nashua office. And then a couple years later we opened up a Concord office, which added an additional 470,000. So presently we're spending over a million dollars on

these two offices. And additionally we're spending other monies for the Berlin office. The State has made a commitment to those regions of the state, and I hope the state, in the future, will make a commitment to Carroll County. Thank you, Madam President.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on SB 351-FN.

Motion of Inexpedient to Legislate adopted.

SB 410, relative to the conditions for issuance of a cremation certificate and relative to the medical examiner's statute. Finance Committee. Ought to Pass, Vote 6-0. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you, Madam President. I move Senate Bill 410 ought to pass. This bill makes a technical correction to the medical examiner's statute and increases the fee for external examinations of a body during a death investigation. I hate to bring these death issues here, but, you know, every once in a while you got to bring 'em forward. The Attorney General brought this issue to our attention and asked for the technical correction. They've already implemented the fee increase, and the funding is in the budget for the fee increase. It goes from 125 to 140 dollars. The Finance Committee asks for your support of the motion of ought to pass. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on SB 410.

The motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 534-FN, eliminating the processing fee on court credit card transactions. Finance Committee. Ought to Pass, Vote 6-0. Senator Janeway for the committee.

SENATOR JANEWAY: Thank you, Madam President. I move Senate Bill 534 ought to pass. This bill eliminates the \$3 processing fee on court credit card transactions. People pay their fines and collect their miles. This fee, on each transaction, was placed in statute in 2005 in the never-ending quest for revenues. Good try. However, the credit card companies have notified the State that the collection of this fee is in violation of the contract we have with them. While the State stands to lose up to a hundred thousand dollars in revenue, we have no choice but to repeal the fee, or face potential litigation from the credit card companies. The Judicial Branch stopped collection of the fee last month. Senate Bill 534 is necessary in order for the courts not to be in violation – in the rather awkward position of being in violation of the statute. The State, incidentally, has notified the credit card companies that legislative action is pending. If it is any consolation, the credit card companies are not seeking any recovery of fees already collected as long as we cease collecting the fee. Therefore, the Finance Committee asks your support for the motion of ought to pass. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on SB 534-FN.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 496, establishing a commission to study incentives for providers of home and community-based care. Health and Human Services Committee. Ought to Pass with Amendment, Vote 5-0. Senator Janeway for the committee.

Sen. Sgambati, Dist. 4
March 4, 2008
2008-0833s
01/04

Amendment to SB 496

Amend the bill by inserting after the enacting clause the following and renumbering the original sections 1-6 to read as 2-7, respectively:

1 Statement of Purpose.

I. The general court recognizes that the number of people over the age of 85 living in New Hampshire is expected to at least double, reaching nearly 45,000, in 2030 according to the United States Census Bureau. These seniors, and many under age 85, will need assistance if they are to remain in their homes. Many New Hampshire families are caring for their parents, grandparents, and developmentally disabled children but need assistance as they juggle caring for their relatives with work outside the home.

II. The general court further recognizes that the pool from which caregivers for the elderly and developmentally disabled is drawn is shrinking. Turnover among these direct care workers ranges from 30–80 percent resulting in inconsistent, disruptive care delivery or, in some cases, no available care at all. Factors which contribute to high turnover include low wages, lack of benefits, lack of support and respect from supervisors and isolated working conditions. Home care workers typically receive lower wages and fewer benefits than their counterparts in hospitals and nursing home settings.

III. Therefore, the general court hereby establishes a commission to bring representatives from the home care industry, direct care workers, and appropriate state agencies together to identify and recommend incentives for providers of home and community-based care.

SENATOR JANEWAY: Thank you again, Madam President. I move that Senate Bill 496 ought to pass with amendment. This bill creates a study to begin to address the growing need for homecare providers. The purpose of the study is to look at ways to create incentives for providers who offer homecare assistance. In order to stabilize the long-term care system, we need to retain the current workers and to recruit new direct-care providers. Without a stable qualified workforce, the quality of care will deteriorate and we will have to reverse the home and community care system and revert to institutional care. Homecare providers are paid an average of \$9.96 an hour; they also have inconsistent and unreliable schedules. They often aren't reimbursed for traveling to their respective patients. Please join the Health and Human Services Committee in voting Senate Bill 496 ought to pass with amendment. Thank you, Madam President.

The question is on the adoption of Committee Amendment 0833s.
Committee Amendment 0833s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 496.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 505-FN, relative to the moratorium on certain nursing home beds. Health and Human Services Committee. Inexpedient to Legislate, Vote 3-2. Senator Sgambati for the committee.

SENATOR SGAMBATI: Thank you, Madam President. I move Senate Bill 505 inexpedient to legislate. This bill lifts a moratorium on intermediate care facility beds in nursing homes for a limited period of time. The bill was proposed to allow one county to sell nursing home beds to another county. The problem inherent in this proposal is that the county wishing to purchase the beds would be over-bedded, if they were indeed to acquire these additional beds. There is a formula in place that allocates beds throughout the state based on need. By passing this bill, we negate the formula, the standards for distribution of beds, and we bypass the work of the Certificate of Need Board. The Committee also had concerns with creating a market for a service or beginning to treat a bed as a commodity. The CON does not charge for current beds, and the Committee did not support the sale of future beds. The Health and Human Services Committee recommends Senate Bill 505 inexpedient to legislate and asks for your support. Thank you, Madam President.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on SB 505-FN.

Motion of Inexpedient to Legislate adopted.

SB 529, changing certain references in the mental health laws. Health and Human Services Committee. Ought to Pass with Amendment, Vote 5-0. Senator Sgambati for the committee.

Sen. Hassan, Dist. 23

March 3, 2008

2008-0806s

01/03

Amendment to SB 529

Amend the bill by replacing section 17 with the following:

17 Involuntary Admissions; Change in Term. Amend RSA 171-B:2, IV to read as follows:

IV. The person has ~~[mental retardation]~~ ***an intellectual disability***, as defined in the most current edition of the Diagnostic ~~[and Statistical]~~ Manual ~~[of Mental Disorders published by]~~ ***-Intellectual Disability developed by the National Association for the Dually Diagnosed in association with*** the American Psychiatric Association; and

SENATOR SGAMBATI: Thank you, Madam President. I move Senate Bill 529 ought to pass with amendment. The bill changes certain references in mental health laws by changing the phrase "mentally retarded" to "intellectually disabled." The term "mentally retarded" is outdated and is, in fact, degrading. The Committee unanimously agreed that it was time to update our language to a phrase that was more current and more respectful of our citizens. Please join the Health and Human Services Committee in voting Senate Bill 529 ought to pass with amendment. Thank you, Madam President.

The question is on the adoption of Committee Amendment 0806s.

Committee Amendment 0806s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 529.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SCR 6, urging the federal government to allow certain nursing homes to use a number of beds for respite care. Health and Human Services Committee. Ought to Pass with Amendment, Vote 5-0. Senator Kenney for the committee.

Sen. Kenney, Dist. 3

March 4, 2008

2008-0816s

09/04

Amendment to SCR 6

Amend the title of the resolution by replacing it with the following:

A RESOLUTION urging the federal government to create a simplified process for short-term admissions to nursing homes for the purpose of respite care.

Amend the resolution by replacing all after the title with the following:

Whereas, an increasing number of elderly and disabled citizens are being cared for in the home, often by family members; and

Whereas, the home care providers of such persons need time to relax and take care of other responsibilities; and

Whereas, there is an acute need for safe and appropriate short-term placements where elderly and disabled citizens can stay while their home caregivers enjoy a period of respite from providing home-based care; and

Whereas, certain nursing homes in New Hampshire would be willing to provide short-term respite care if there was a simplified and streamlined process for such admissions; now, therefore, be it

Resolved by the Senate, the House of Representatives concurring:

That the general court of New Hampshire hereby urges Congress to develop a simplified and streamlined process for short-term admissions to nursing homes for the purpose of respite care that minimizes, to the greatest extent possible, paperwork and recordkeeping that needs to be completed prior to and during such admissions; and

That copies of this resolution shall be sent by the senate clerk to the President of the United States Senate, the Speaker of the United States House of Representatives, the United States Secretary of Health and Human Services, and each member of the New Hampshire congressional delegation.

2008-0816s

AMENDED ANALYSIS

This senate concurrent resolution urges the federal government to allow certain nursing homes to use a number of beds for respite care and to create a simplified, streamlined process for short-term admissions to nursing homes for the purpose of respite care.

SENATOR KENNEY: Thank you, Madam President. I move Senate Concurrent Resolution 6 ought to pass with amendment. This resolution urges the federal government to allow certain nursing homes to use unoccupied beds for respite care. Federal regulations are an impediment to this important service. Respite care is an essential component of a Home and Community Based Care system. Without it, exhausted families will turn to more expensive institutional care and state expenses will increase. Nursing homes have the capacity to care for these individuals on a short-term basis, providing a safe environment and professional care. There's no downside to this proposal. Nursing homes can increase their income, the individual is provided the needed care,

and the family is assured of appropriate care. Eighty percent of the long-term care in this state is provided by families. If they all gave up tomorrow because of lack of support, they would bankrupt the state system. The only barrier to the cost-effective solution is the federal government. This solution asks that they reconsider their regulations so respite care is allowed. The Committee heard extensive testimony in support of this resolution, and we ask that you join the Health and Human Services Committee in voting SCR 6 ought to pass with amendment. Thank you, Madam President.

The question is on adoption of Committee Amendment 0816s.

Committee Amendment 0816s adopted.

The question is on the adoption of Ought to Pass as Amended on SCR 6.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

Sen. Larsen presiding.

SB 425, relative to the data collection practices of health care providers. Health and Human Services Committee. Ought to Pass with Amendment, Vote 5-0. Senator Fuller Clark for the committee.

Sen. Hassan, Dist. 23

January 28, 2008

2008-0275s

01/03

Amendment to SB 425

Amend the title of the bill by replacing it with the following:

AN ACT relative to the data collection practices of health care providers and relative to the development of a comprehensive uninsured health care database.

Amend the bill by replacing all after the enacting clause with the following:

1 Health Care Data Collection. RSA 126:25, II is repealed and reenacted to read as follows:

II. A health care provider that is licensed by the state or lawfully providing health care services in New Hampshire and that submits its health care claims electronically for reimbursement shall submit health care claim data for any person who receives health care services and does not have health insurance and whose care is not paid for by a governmental program to the department of health and human services or its agent. The health care claims data shall be submitted in a format that is consistent with the claims data submitted electronically for reimbursement and shall include service level remittance information for each billed service that includes patient demographics, provider information, charge payment information, and clinical diagnosis and procedure codes.

2 New Chapter; Comprehensive Uninsured Health Care Database. Amend RSA by inserting after chapter 126-Q the following new chapter:

CHAPTER 126-R

COMPREHENSIVE UNINSURED HEALTH CARE DATABASE

126-R:1 Database Development and Use.

I. The commissioner of the insurance department and the commissioner of the department of health and human services shall enter into

a memorandum of understanding for collaboration in the development of a comprehensive uninsured health care database. The memorandum of understanding shall include a description of the uninsured database, the criteria and procedures for the collection and the release of the uninsured data set, and the requirements for reporting information on the uninsured.

II. To the extent allowed by the Health Information Portability and Accountability Act (HIPAA), the data shall be available as a resource tool for policy analysts, insurers, legislators, employers, health care providers, purchasers of health care, and state agencies to review the uninsured population's utilization of health care, the cost of services provided to the uninsured, and the effect of that utilization on the commercial insurance market.

III. The comprehensive uninsured health care database shall not include any data that contains direct personal identifiers. For purposes of this section, "direct personal identifiers" shall include information relating to an individual that contains primary identifiers, such as the individual's name, street address, e-mail address, telephone number, and social security number.

126-R:2 Rulemaking Authority.

I. The commissioner of the department of health and human services, in consultation with the commissioner of the insurance department, shall adopt rules under RSA 541-A as may be necessary to provide for the reporting and release of uninsured health care data.

II. The commissioner of the insurance department, in consultation with the commissioner of the department of health and human services, shall adopt rules under RSA 541-A as may be necessary to provide for the collection of uninsured health care data.

3 Effective Date. This act shall take effect January 1, 2009.

2008-0275s

AMENDED ANALYSIS

This bill requires health care providers that submit health care claims electronically for reimbursement to submit health care claims data for any person who is uninsured and whose care is not paid for by a governmental program to the department of health and human services.

This bill also requires the commissioner of the insurance department and the commissioner of the department of health and human services to enter into a memorandum of understanding for collaboration in the development of a comprehensive uninsured health care database. The bill grants rulemaking authority to the commissioners for the purposes of the collaborative effort.

SENATOR FULLER CLARK: Thank you very much, Madam President. I move that Senate Bill 425 ought to pass with amendment. This amended bill requires an insurance provider submitting hospital discharge data electronically for insured patients, for data collection purposes, shall also now include that information for their uninsured patients. Currently, we have no way of tracking the cost for uninsured patients in our hospital. This would be a very important bill that would allow us to analyze and determine if our healthcare dollars are being spent effectively and efficiently. Please join the Health and Human Services Committee in voting Senate Bill 425 ought to pass with amendment. Thank you very much, Madam President.

The question is on the adoption of Committee Amendment 0275s. Committee Amendment 0275s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 425.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 460, relative to the definition of surviving issue. Judiciary Committee. Ought to Pass with Amendment, Vote 4-0. Senator Foster for the committee.

**Senate Judiciary
March 5, 2008
2008-0861s
01/09**

Amendment to SB 460

Amend the bill by replacing section 2 with the following:

2 Applicability. This act shall apply to all children, including retroactively, conceived after the death of a parent.

SENATOR FOSTER: Thank you, Madam President. I move SB 460 ought to pass with amendment. Senate Bill 460 is relative to the definition of "surviving issue" and would allow a parent who has predeceased a child to be recognized as the child's parent for inheritance and other governmental benefits. With current advances in science, a parent who finds him or herself being sent into a war zone or diagnosed with a possibly terminal condition can take appropriate steps to enable his or her children to be born after their death. This legislation provides a very narrow exception to current law, and has been enacted in a number of other states. And it allows an entire class of citizens who are now shut out to be recognized. The committee amendment provides that families already in this situation when the statute goes into effect will also be recognized. In other words, the legislation would have retroactive application. The law arose from a Supreme Court decision finding that such children are not, under our statutory scheme, issue of their predeceased parent. In that decision, in a concurrence, Chief Justice Broderick felt that while the ruling was correct, it also led to an unfair result, and noted that the Legislature may want to consider the situation. This legislation does so, and it is intended to cover the circumstances described in that case. The Committee recommends that SB 460 ought to be adopted as amended, and asks for your support. Thank you, Madam President.

The question is on the adoption of Committee Amendment 0861s. Committee Amendment 0861s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 460.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 483, establishing a committee to study in-home intervention and counseling services for families and children charged with a crime or designated in need of services by the juvenile court. Judiciary Committee. Ought to Pass with Amendment, Vote 5-0. Senator Gottesman for the committee.

**Senate Judiciary
March 5, 2008
2008-0858s
05/04**

Amendment to SB 483

Amend subparagraph I(a) of section 2 of the bill by replacing it with the following:

(a) One member of the senate, appointed by the president of the senate.

Amend the bill by replacing section 4 with the following:

4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the senate member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Two members of the committee shall constitute a quorum.

SENATOR GOTTESMAN: Thank you, Madam President. I move SB 483 ought to pass with amendment. Senate Bill 483 establishes a committee to study in-home intervention and counseling services for families and children charged with a crime or designated in need of services by the juvenile court. This legislation would enable a study committee to figure out how treatment for children and their families can be provided in a more cost-effective and successful manner. Too often when children are treated in facilities out of the family structure, the underlying problems are not addressed. The intent is for these alternative treatment methods to be available only for medium-risk juveniles. The committee amendment merely changes the number of Senators to one, and reduces the quorum to two. The Judiciary Committee recommends that SB 483 be adopted as amended, and asks your support.

**The question is on the adoption of Committee Amendment 0858s.
Committee Amendment 0858s adopted.**

The question is on the adoption of Ought to Pass as Amended on SB 483.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 387, relative to forfeiture of recognizances. Judiciary Committee. Inexpedient to Legislate, Vote 5-0. Senator Reynolds for the committee.

SENATOR REYNOLDS: Thank you, Madam President. I move SB 387 as inexpedient to legislate. This legislation sought to extend the time for forfeiture of a bail bond to 90 days from the current 30 days. While the Committee is extremely sympathetic to Sen. Barnes and his constituent, and we appreciate Sen. Barnes bringing this forward, we believe that this was one isolated instance for this particular bail commissioner, with the court, that perhaps did not uniformly apply the statute the way most other courts have. And aside from this one example, there doesn't seem to be a problem in the other courts. The Judiciary Committee respectfully recommends that SB 387 be inexpedient to legislate, and asks your support. Thank you, Madam President.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on SB 387.

Motion of Inexpedient to Legislate adopted.

Sen. Barnes is in opposition to the motion of Inexpedient to Legislate on SB 387.

SB 392, relative to recovery of child support payments. Judiciary Committee. Inexpedient to Legislate, Vote 5-0. Senator Foster for the committee.

SENATOR FOSTER: Thank you, Madam President. I move SB 392 inexpedient to legislate. This legislation sought to require employers to provide notice to HHS for employees who are in arrearage on child support payments at a time when they might be receiving a large bonus or commission or lump-sum payment. While the Committee is in no way sympathetic to parents who are not fulfilling their obligations to support their children, we are sympathetic to the employers with this requested burden to report bonus, vacation, or commission payments, as low as the bill as written, \$100. The committee members had concerns about errors as well as the possibility that this could discourage some employers to even want to hire such individuals who obviously need jobs. Therefore, the Judiciary Committee recommends that SB 392 be inexpedient to legislate and asks for your support. Thank you, Madam President.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on SB 392.

Motion of Inexpedient to Legislate adopted.

SB 400, relative to the authority of bail commissioners. Judiciary Committee. Ought to Pass, Vote 5-0. Senator Clegg for the committee.

SENATOR CLEGG: Thank you, Madam President. I move Senate Bill 400 ought to pass. The legislation was filed on behalf of the Judicial Branch in order to address an issue where some courts have taken the position that bail commissioners are only able to serve where they were locally appointed. The intent of Senate Bill 400 is to clarify that bail commissioners serve not only at the local court, but at any District Court in the state. The Judiciary Committee recommends Senate Bill 400 be adopted, and asks for your support. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on SB 400.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 445, updating the procedure for recommending persons for initial appointment as marital masters. Judiciary Committee. Ought to Pass with Amendment, Vote 5-0. Senator Gottesman for the committee.

Senate Judiciary

March 11, 2008

2008-0966s

09/04

Amendment to SB 445

Amend the title of the bill by replacing it with the following:

AN ACT changing the procedure for recommending persons for initial appointment as marital masters.

Amend the bill by replacing section 1 with the following:

1 Nominations and Appointments of Marital Masters. Amend RSA 490-D:7, I and II to read as follows:

I. The administrative judge of the judicial branch family division, *with the concurrence of the supreme court*, shall recommend persons to the governor and council for initial appointment as marital masters.

In recommending candidates for initial appointment as marital masters under this chapter, the division shall utilize the procedures and standards described in [~~superior court rules in effect as of July 1, 2004~~] ***the rules of the judicial branch family division***, except as otherwise provided in this chapter.

II. For appointments of new marital masters, the administrative judge of the judicial branch family division, ***with the concurrence of the supreme court***, shall submit to the governor the name of a nominee. The governor may accept the candidate nominated by the administrative judge and submit the candidate to the council for confirmation or may reject the candidate submitted by the administrative judge, and request a new nominee. If the council rejects a candidate for confirmation, the governor shall request a new nominee.

2008-0966s

AMENDED ANALYSIS

This bill changes the procedure for recommending persons for initial appointment as marital masters by replacing a reference to superior court rules with judicial branch family division rules and requiring the concurrence of the supreme court.

This bill was requested by the supreme court.

SENATOR GOTTESMAN: Thank you, Madam President. I move Senate Bill 445 ought to pass with amendment. This legislation updates the procedure for recommending persons for initial appointment as marital masters and was requested by the Judicial Branch. As the Family Division moves statewide, the statute needs an update to make sure that the Family Division Rules, and not those of the Superior Court, govern the appointment of Marital Masters. Under this legislation as amended, recommendations will come forward to the Governor from the Administrative Judge of the Family Division, with a concurrence of the Supreme Court. The Governor will make the recommendation to the Executive Council for consideration. The rules of the Family Division will be amended to be parallel to this statute. The Judiciary Committee recommends that Senate Bill 445 be adopted as amended and asks your support. Thank you.

The question is on the adoption of Committee Amendment 0966s.

Committee Amendment 0966s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 445.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 342-FN-L, establishing a mechanism for expediting relief from municipal actions which deny, impede, or delay qualified proposals for workforce housing. Public and Municipal Affairs Committee. Ought to Pass with Amendment, Vote 3-0. Senator Hassan for the committee.

Public and Municipal Affairs

March 4, 2008

2008-0818s

06/09

Amendment to SB 342-FN-LOCAL

Amend the bill by replacing all after the enacting clause with the following:

1 Findings and Statement of Purpose.

I. The state of New Hampshire is experiencing a shortage of housing that is affordable to working households. This housing shortage poses a threat to the state's economic growth, presents a barrier to the expansion of the state's labor force, undermines state efforts to foster a productive and self-reliant workforce, and adversely affects the ability of many communities to host new businesses.

II. Achieving a balanced supply of housing, which requires increasing the supply of workforce housing, serves a statewide public interest, and constitutes an urgent and compelling public policy goal.

III. The purpose of this act is to provide a simplified appeals mechanism for developments that propose the creation of workforce housing.

2 New Subdivision; Workforce Housing Opportunities. Amend RSA 674 by inserting after section 57 the following new subdivision:

Workforce Housing

674:58 In this subdivision:

I. "Affordable" means housing with combined rental and utility costs or combined mortgage and loan debt services, property taxes, and required insurance that do not exceed 30 percent of a household's gross annual income.

II. "Multi-family workforce housing" means a building or structure containing 5 or more dwelling units.

III. "Reasonable and realistic opportunities for the development of workforce housing" means opportunities to develop economically viable workforce housing within the framework of a municipality's ordinances and regulations adopted pursuant to this chapter and consistent with RSA 672:1, III-e. The collective impact of all such ordinances and regulations on a proposal for the development of workforce housing shall be considered in determining whether opportunities for the development of workforce housing are reasonable and realistic.

IV. "Workforce housing" means housing which is intended for sale and which is affordable to a household with an income of no more than 100 percent of the median income for a 4-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. "Workforce housing" also means rental housing, which is affordable to a household with an income of no more than 60 percent of the median income for a 3-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. Housing developments that exclude minor children from more than 20 percent of the units, or in which more than 50 percent of the dwelling units have fewer than 2 bedrooms, shall not constitute workforce housing for the purposes of this subdivision.

674:59 Workforce Housing Opportunities. In every municipality that exercises the power to adopt land use ordinances and regulations, such ordinances and regulations shall provide reasonable and realistic opportunities for the development of workforce housing, including multifamily workforce housing. In order to provide such realistic opportunities, lot size and overall density requirements for workforce housing shall be reasonable. Municipalities shall not use unreasonable requirements for inclusionary zoning to prevent the development of projects that include workforce housing supported by higher income housing.

674:60 Appeals.

I. Any person whose application to develop workforce housing is denied or is approved with conditions or restrictions which have a substantial adverse impact on the viability of the proposed workforce housing develop-

ment may appeal the municipal action to the superior court. The appeal shall set forth how the municipal action violates the workforce housing requirements of RSA 674:59 or how the conditions or restrictions of approval have a substantial adverse impact on the viability of the proposal. The appeal shall specifically describe the order or action requested of the court. The petition to the court shall set forth how the denial is due to the municipality's failure to comply with the workforce housing requirements of RSA 674:59 or how the conditions or restrictions of approval have a substantial adverse impact on the viability of the proposal.

II. A hearing on the appeal shall be held within 6 months of the date on which the action was filed unless counsel for the parties agree to a later date, or the court so orders for good cause.

III. In order to expedite the appeal, either party may request the court to promptly appoint an impartial referee to hear the appeal. The parties shall bear the reasonable expenses of the referee.

3 Effective Date. This act shall take effect 60 days after its passage.

SENATOR HASSAN: Thank you, Madam President. I move that Senate Bill 342-FN-Local ought to pass with amendment. This bill establishes a mechanism for expediting relief from municipal actions which deny, impede, or delay qualified proposals for workforce housing. The amendment includes a "Findings and Statement of Purpose" section, alterations to the definition of "multi-family work housing," addresses the issue of senior housing, uses a different percentage of median income, and makes changes to the appeals section. The lack of adequate workforce housing remains a major problem facing New Hampshire. This shortage prevents expansion of the labor force and creates barriers in the way of the creation and growth of local business. An appeals mechanism in which we could more quickly resolve conflicts regarding the construction of workforce housing is needed, and this bill is the right approach. I will note that recent developments in the House make it appropriate to amend the bill further, next week, and we don't have that amendment ready today. The Public and Municipal Affairs will request your support for Senate Bill 342-FN next week. Thank you.

MOTION TO TABLE

Sen. Fuller Clark moved to have SB 342-FN-L laid on the table.

Motion adopted.

LAIID ON THE TABLE

SB 342-FN-L, establishing a mechanism for expediting relief from municipal actions which deny, impede, or delay qualified proposals for workforce housing.

SB 398, establishing a committee to study municipal boundaries and the laws pertaining to these boundaries. Public and Municipal Affairs Committee. Ought to Pass with Amendment, Vote 5-0. Senator DeVries for the committee.

Public and Municipal Affairs

March 4, 2008

2008-0822s

06/09

Amendment to SB 398

Amend paragraph I(a) of section 2 of the bill by replacing it with the following:

(a) One member of the senate, appointed by the president of the senate.

Amend the bill by replacing section 4 with the following:

4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named senate member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Two members of the committee shall constitute a quorum.

SENATOR DEVRIES: Thank you, Madam President. I move that Senate Bill 398 ought to pass with amendment. This amended bill establishes a committee to study the perambulation of municipal boundaries. The Committee heard testimony that our bounds are not being walked and verified as required in statute today, and that the Committee agrees that there is a need to study these concerns. The Public and Municipal Affairs Committee asks for your support for this amended legislation. Thank you.

The question is on the adoption of Committee Amendment 0822s. Committee Amendment 0822s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 398.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 407, establishing a committee to study the right of entry upon lands for the purpose of conducting a land survey. Public and Municipal Affairs Committee. Ought to Pass with Amendment, Vote 5-0. Senator DeVries for the committee.

Public and Municipal Affairs

March 4, 2008

2008-0821s

05/10

Amendment to SB 407

Amend the bill by replacing subparagraph I(a) of section 2 of the bill with the following:

(a) One member of the senate, appointed by the president of the senate.

Amend the bill by replacing section 4 with the following:

4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the senate member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Two members of the committee shall constitute a quorum.

SENATOR DEVRIES: Thank you again, Madam President. I move that Senate Bill 407 ought to pass with amendment. This amended bill establishes a committee to study the right of entry upon lands for purposes of conducting a land survey. It was noted in committee that 27 states currently have statutes regarding this issue, and the bill would help bring more clarity to the rights and responsibilities of land surveyors. The Public and Municipal Affairs Committee requests your support for Senate Bill 407 with amendment. Thank you.

The question is on the adoption of Committee Amendment 0821s. Committee Amendment 0821s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 407.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 489, establishing a commission to study erecting a fire tower on Copple Crown mountain in Wolfeboro. Public and Municipal Affairs Committee. Ought to Pass with Amendment, Vote 5-0. Senator Sgambati for the committee.

Public and Municipal Affairs

March 4, 2008

2008-0825s

04/01

Amendment to SB 489

Amend the title of the bill by replacing it with the following:

AN ACT establishing a commission to study erecting a fire tower on Copple Crown mountain in Brookfield.

Amend the bill by replacing all after the enacting clause with the following:

1 Commission Established. There is established a commission to study erecting a fire tower on Copple Crown mountain in Brookfield.

2 Membership and Compensation.

I. The members of the commission shall be as follows:

(a) One member of the senate, appointed by the president of the senate.

(b) Three members of the house of representatives, appointed by the speaker of the house of representatives.

(c) One member from the forest protection bureau, division of forests and lands, department of resources and economic development, appointed by the director of the division of forests and lands.

II. Legislative members of the commission shall receive mileage at the legislative rate when attending to the duties of the commission.

3 Duties. The commission shall study erecting a fire tower on Copple Crown mountain in Brookfield. The commission may solicit and receive information and testimony from any individual or organization with information relevant to the commission's objectives.

4 Chairperson; Quorum. The members of the commission shall elect a chairperson from among the members. The first meeting of the commission shall be called by the first-named senate member. The first meeting of the commission shall be held within 45 days of the effective date of this section. Two members of the commission shall constitute a quorum.

5 Report. The commission shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2008.

6 Effective Date. This act shall take effect upon its passage.

2008-0825s

AMENDED ANALYSIS

This bill establishes a commission to study erecting a fire tower on Copple Crown mountain in Brookfield.

MOTION TO TABLE

Sen. Sgambati moved to have SB 489 laid on the table.

Motion adopted.

LAI D ON THE TABLE

SB 489, establishing a commission to study erecting a fire tower on Copple Crown mountain in Wolfeboro.

SB 524, relative to eligibility for persons to receive the elderly property tax exemption. Public and Municipal Affairs Committee. Ought to Pass, Vote 5-0. Senator Sgambati for the committee.

SENATOR SGAMBATI: Thank you, Madam President. I move that Senate Bill 524 ought to pass. This bill eliminates the requirement that a person who applies for the elderly property tax exemption be married for at least five years in certain circumstances. The Committee agrees that the requirement for elderly couples to be married for five years in order to get this tax exemption is unnecessary. So we ask you to join us in supporting marriage of our elders, and ask you to vote with us ought to pass on Senate Bill 524. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on SB 524.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 421-L, requiring municipal land use regulation to provide reasonable opportunities for the creation of workforce housing. Public and Municipal Affairs Committee. Ought to Pass with Amendment, Vote 3-0. Senator DeVries for the committee.

Sen. Fuller Clark, Dist. 24

February 12, 2008

2008-0523s

06/03

Amendment to SB 421-LOCAL

Amend the title of the bill by replacing it with the following:

AN ACT relative to workforce housing.

Amend the bill by replacing all after the enacting clause with the following:

1 Findings and Statement of Purpose.

I. The state of New Hampshire is experiencing a shortage of housing that is affordable to working households. This housing shortage poses a threat to the state's economic growth, presents a barrier to the expansion of the state's labor force, undermines state efforts to foster a productive and self-reliant workforce, and adversely affects the ability of many communities to host new businesses.

II. Achieving a balanced supply of housing, which requires increasing the supply of workforce housing, serves a statewide public interest, and constitutes an urgent and compelling public policy goal.

III. The purpose of this act is to clarify the requirements of Britton v. Chester, 134 N.H. 434 (1991), and to provide guidance for complying with those requirements to local officials and the public.

IV. The subdivision enacted in section 2 of this act is intended to provide the maximum feasible flexibility to municipalities in exercising the zoning powers under RSA 674 consistent with their obligation to provide reasonable opportunities for the development of workforce housing, and is not intended to create a system of statewide land use regulation or a statewide zoning process.

2 New Subdivision: Workforce Housing. Amend RSA 674 by inserting after section 57 the following new subdivision:

Workforce Housing

674:58 Definitions. In this subdivision

I. "Affordable" means housing with combined rental and utility costs or combined mortgage and loan debt services, property taxes, and required insurance that do not exceed 30 percent of a household's gross annual income.

II. "Multi-family workforce housing" means a building or structure containing 5 or more dwelling units.

III. "Reasonable and realistic opportunities for the development of workforce housing" means opportunities to develop economically viable workforce housing within the framework of a municipality's ordinances and regulations adopted pursuant to this chapter and consistent with RSA 672:1, III-e. The collective impact of all such ordinances and regulations on a proposal for the development of workforce housing shall be considered in determining whether opportunities for the development of workforce housing are reasonable and realistic.

IV. "Workforce housing" means housing which is intended for sale and which is affordable to a household with an income of no more than 100 percent of the median income for a 4-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. "Workforce Housing" also means rental housing which is affordable to a household with an income of no more than 60 percent of the median income for a 3-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. Housing developments that exclude minor children from more than 20 percent of the units, or in which more than 50 percent of the dwelling units have fewer than 2 bedrooms, shall not constitute workforce housing for the purposes of this subdivision.

674:59 Workforce Housing Opportunities. In every municipality that exercises the power to adopt land use ordinances and regulations, such ordinances and regulations shall provide reasonable and realistic opportunities for the development of workforce housing, including multi-family workforce housing. In order to provide such realistic opportunities, lot size and overall density requirements for workforce housing shall be reasonable. Municipalities shall not use unreasonable requirements for inclusionary zoning to prevent the development of projects that include workforce housing supported by higher income housing.

3 Declaration of Purpose. Amend RSA 672:1, III-e to read as follows:

III-e. All citizens of the state benefit from a balanced supply of housing which is affordable to persons and families of low and moderate income. Establishment of housing which is decent, safe, sanitary, and affordable to low and moderate income persons and families is in the best interests of each community and the state of New Hampshire, and serves a vital public need. Opportunity for development of such housing, including so-called cluster development and the development of multi-family structures, ~~should~~ **shall** not be prohibited or discouraged by use of municipal planning and zoning powers or by unreasonable interpretation of such powers.

4 Effective Date. This act shall take effect 60 days after its passage.

2008-0523s

AMENDED ANALYSIS

This bill declares it to be the policy of planning and zoning regulation in the state that municipalities have an obligation to provide reasonable and realistic opportunities for the development of workforce housing.

MOTION TO TABLE

Sen. DeVries moved to have SB 421-L laid on the table.

Motion adopted.

LAIID ON THE TABLE

SB 421-L, requiring municipal land use regulation to provide reasonable opportunities for the creation of workforce housing.

Recess/Out of recess.

SB 479, relative to the vote required for passage of school bonds. Public and Municipal Affairs Committee. Ought to Pass with Amendment, Vote 3-1. Senator Barnes for the committee.

Public and Municipal Affairs

March 10, 2008

2008-0948s

04/09

Amendment to SB 479

Amend the bill by replacing section 2 with the following:

2 Effective Date. This act shall take effect upon its passage.

SENATOR BARNES: Thank you, Madam President. I move that Senate Bill 479 ought to pass with amendment. This amended legislation changes the required majority vote for passage of notes or bonds issued by a school district from 2/3 to 3/5. Committee testimony noted that Senate Bill-2 towns have already made this change. And I might mention the fact that it was Sen. Estabrook, then Rep. Estabrook in 1999, that had that happen. I want to give the credit where the credit is due ... to my good friend, Sen. Estabrook.

SENATOR ESTABROOK: I appreciate that. (Laughter)

SENATOR BARNES: You're welcome. See how civil we are, Sen. D'Allesandro? (Laughter)

SENATOR D'ALLESANDRO: Jack, I can feel the love.

SENATOR BARNES: Well, let's see – Committee testimony noted that Senate Bill-2 towns have already made this change and it has led to several schools getting the upgrades that they have needed. The Committee feels that a 3/5 majority is a fair and appropriate threshold for the approval of an important matter such as this. And that puts everything on an even playing field, the Senate Bill-2 towns and the other towns, let them play evenly. Also, if a town, you know, a town has a choice – two choices: they can go to a charter or they can go to Senate Bill 2 to get that type of situation. I think you all know that, and I think that's probably going to be some of the conversation that we hear. With that, I will sit down and say that the Committee really would appreciate your support. It was a 3-1 vote. And let's let the conversation flow.

(The Chair recognized Sen. Bragdon to speak.)

PARLIAMENTARY INQUIRY

SENATOR BRAGDON: Madam President, no one's really spoken about the amendment. Maybe a question for the Chair.

PRESIDENT LARSEN: Question for the chair.

SENATOR BRAGDON: I noticed that the amendment makes the bill effective immediately. I noticed from reading the hearing report that the

Town of Marlborough, in Sen. Kelly's district, voted earlier this week or last week, and had a bond vote fail by one vote, and are revoting on April the 8th. Is the intent of this amendment to allow them to revote under a different set of rules?

PRESIDENT LARSEN: As you recall, a Senate bill requires passage by the House and signature by the Governor in order to become law. The likelihood of that happening by April the 8th –

SENATOR BRAGDON: April the 8th.

PRESIDENT LARSEN: – is very, very unlikely.

SENATOR BRAGDON: So that is not the intent of this.

PRESIDENT LARSEN: That is not the intent, as far as I know. If it's not law, it is not changed and they operate under the law that they pass, that they vote on at the time they vote.

SENATOR BRAGDON: If someone could address that, that would be helpful.

(The Chair recognized Sen. Hassan to speak.)

SENATOR HASSAN: Sure. I stand in support of the committee amendment, and can also speak later in favor of the bill. But the intent of the committee amendment is not to change the rules mid-consideration for the Town of Marlborough. I concur with the Senate President's assessment of the likelihood that this bill would be passed and signed by the Governor by April 8th. It's very small.

(The Chair recognized Sen. Gatsas for a question of Sen. Hassan.)

SENATOR GATSAS: Senator, in the communities of Manchester and Nashua where there's an aldermanic board and they're the ones that issue bonds for both the municipality and the school district, would the 2/3 vote still apply in those two communities?

SENATOR HASSAN: Thank you for the question, Senator. It's my understanding, and Senate counsel and the City of Manchester's legal counsel have conferred today, that in fact, the way this bill is written, it will not apply to bonds issued by the City of Manchester itself, it only applies to school districts. And to the extent the City of Manchester issues bonds on behalf of the school district, it does not apply.

SENATOR GATSAS: Thank you.

(The Chair recognized Sen. Clegg for a question of Sen. Hassan.)

SENATOR CLEGG: Senator, actually, I have two questions. My first one is, if this isn't meant to affect something that's already in the work, then why are we rushing for passage upon, or an immediate passage?

SENATOR HASSAN: I think it was the Committee's feeling that as soon as it was passed, it should be effective. I don't know what's happening in other towns, but to the extent that other towns might be considering it, we thought it was a good idea to do it as soon as it was passed.

SENATOR CLEGG: Further question. Then, can you explain to me why the Committee would want to exempt cities like Manchester and Nashua from the same argument that you obviously heard from the smaller communities?

SENATOR HASSAN: I note that the statute as a whole does not apply to communities that have adopted a charter. So I think that that's one of the reasons that we didn't consider amending the bill to include Manchester.

SENATOR CLEGG: Further question. But Manchester's charter doesn't speak to what size vote it needs, so actually this does speak to it, 'cause it says if your charter is silent, then you are affected by this chapter. So I'm just wondering why we exempted Manchester.

SENATOR HASSAN: There was no conscious attempt to exempt Manchester. It appears that it is exempted. And to the extent that what we were dealing with, as the bill was brought to us, the communities that spoke on behalf of this legislation were passionate about the impact of a 2/3 vote in a very small town where a minority has delayed the building of the new school for over eight years, at great expense to the taxpayers, because obviously a new school will be much more expensive than it would have been eight years ago. That's the issue we were trying to address. If the Manchester Senators here would like us to include Manchester, that is something we could do in another bill. But I'd like to move this one forward to address the concerns brought by the other towns that urged passage of this bill.

SENATOR CLEGG: Thank you.

**The question is on the adoption of Committee Amendment 0948s.
Committee Amendment 0948s adopted.**

(The Chair recognized Sen. Bragdon for a question of Sen. Barnes.)

SENATOR BRAGDON: Are you aware, Sen. Barnes, of any studies that have shown that it might be more difficult to pass bond articles in SB2 towns than in traditional town-meeting towns?

SENATOR BARNES: I'm glad you asked me that question.

SENATOR BRAGDON: Are you?

SENATOR BARNES: Because I have some personal experience with that. Raymond happens to be a Senate Bill-2 town, which I helped to get into the town. I'm a strong supporter of Senate Bill 2. It took three votes in the Town of Raymond, and a heck of a lot of work by a lot of people, to get a 1918 middle school torn down and a new one, \$13.5 million, put up. It took us three times to do it. I was on the school board for one of those years, and a lot of work went into it. So, yes, we got our 60 percent. We got probably 62 percent, to get it, when we finally got it passed. But whatever the percentage is, if the people don't have the money in their pocket – and you saw that on Tuesday, a lot of towns voted money articles down. It's not because the towns were nasty and tight; it's because people are hurting and the economy stinks right now. That's why people voted no, to protect their billfold. But to answer your question: Yes. It's very difficult. Sixty-percent is not an easy number to get, either, in my opinion. And it sure wasn't in Raymond. It took a lot of work and a lot of door-to-door knocking to get people convinced that that 1918 school should be gutted and a new one built.

SENATOR BRAGDON: Thank you.

**The question is on the adoption of Ought to Pass as Amended on
SB 479.**

(The Chair recognized Sen. Kenney to speak.)

SENATOR KENNEY: Thank you. I'm voting against this bill. And I'm concerned that when the voting percentages go from 67 down to 60 percent on bond articles for non-SB2 school districts that we're going down a slippery slope. Now, let me explain that. Over the years I've represented

17 communities, and every time there's a smaller group of people voting on larger bond articles for millions of dollars, I believe there always should be a higher percentage of people who are involved in those school district bonds, which is currently a 2/3 vote, at 67 percent. If you look at what happened a couple of days ago in New Castle, you had a situation where 15 people walked in, and voting on a \$1.8 million school budget, it was an operating budget, and they just walked in. Another situation happened in my community – not my community, up in Madison, where a small group of people walked into a town meeting – it was later in the day, it was snowing outside, and at the end of that town meeting – in this case, it was a town meeting – they had voted a public drinking ordinance into the community where they could drink at the public ball fields and public town parks. And this is a school – I understand this is a school's side, but what I'm trying to point out is when a smaller group of people can go into a school district meeting, and go into a town meeting, that they can really dictate what goes on. And therefore I believe that we should have a 2/3 vote, when it comes to voting on these important and large warrant articles when it comes to school side. I'll also say, currently right now, with the SB2 towns, it's at 60 percent. If they're voting the school or town side, it's at 60 percent. Now, hundreds, in some cases, thousands of people vote via paper ballot. That gives them an – that gives more people that are voting – statistically, it's proven that more people are voting on paper ballots than will walk down to the town hall, or walk down into the school district meeting. I think we're, again, walking down a slippery slope when we lower the percentage on school district bonding articles. So that's why I'm voting against. Thank you, Madam President.

(The Chair recognized Sen. Estabrook for a question of Sen. Hassan.)

SENATOR ESTABROOK: Thank you. Sen. Hassan, would you believe that on the same day that the House passed the previous bill, lowering the percent needed from 2/3 to 3/5 for SB2 communities, the House voted, on a voice vote, to bond \$50 million for the Berlin prison, on a simple majority?

SENATOR HASSAN: I would believe that.

SENATOR ESTABROOK: Thank you. And I have a further question. Are you aware of any other requirement in law that requires 2/3, other than amending the constitution? And do you believe that it should be as difficult to build a school as it should be to amend the constitution?

SENATOR HASSAN: I am unaware of any other requirement, other than amending the constitution, that requires a 2/3 vote. And I do think that it should be easier to build a school than to amend the constitution.

SENATOR ESTABROOK: Thank you.

(The Chair recognized Sen. Letourneau for a question of Sen. Kenney.)

SENATOR LETOURNEAU: Sen. Kenney, in regard to SB2 towns, don't the people in those towns get to vote on whether or not they want to go Senate Bill 2?

SENATOR KENNEY: Yes, they do, Sen. Letourneau. They get to vote on that, whether they want to go to SB2 town status.

SENATOR LETOURNEAU: So where is their voice here, today?

SENATOR KENNEY: Could you repeat that?

SENATOR LETOURNEAU: Where is their voice here, today?

SENATOR KENNEY: Where is their voice here today? They're through their state Senators.

SENATOR LETOURNEAU: Thank you.

(The Chair recognized Sen. Bragdon for a question of Sen. Barnes.)

SENATOR BRAGDON: Just curious, Senator, if I have a town that's been trying to build a fire station, and has had difficulty passing it at town meeting, how come they still have to get 66 percent to build their fire station, but they can build their school with only 60 percent?

SENATOR BARNES: Well, I think, Senator, that probably the fire department in that town is waiting for you to bring a bill forward to correct that.

SENATOR BRAGDON: Thanks, I think.

SENATOR GOTTESMAN: Yes, I move the question.

Sen. Gottesman moved the question.

Without objection, the Chair moved to close debate with several speakers remaining.

(The Chair recognized Sen. Clegg for inquiry of Sen. Hassan.)

SENATOR CLEGG: Sen. Hassan, you were just asked the question if you knew of anything other than the constitution that required 2/3. So once again I'll ask you, should we hold this bill till next week so that we can add the schools of Manchester and Nashua into this, so that we don't have to do a constitutional amendment type deal in those towns, cities?

SENATOR HASSAN: I think there are opportunities to amend this bill on the other side. I would like to move this bill forward. If people are concerned, their constituents have brought with them concerns about either Manchester, Nashua, or fire stations, their representatives are free to bring forward bills or amendments as this proceeds.

SENATOR CLEGG: You do understand, I just like to be fair with everybody. Not forget the cities.

SENATOR HASSAN: It is something I've always appreciated about you, Sen. Clegg.

SENATOR CLEGG: Thank you. (Laughter)

(The Chair recognized Sen. Hassan to speak.)

SENATOR HASSAN: Thank you, Madam President. I just rise to speak, to note that some of the discussion we've had on the floor just now was similar to some of the discussion that we heard in committee, and that we heard prior to the committee hearing from constituents in areas where building a school has become an issue. What we heard very much from the proponents of this bill was that a determined minority in a community had, for eight years, held up the building of a school because of the provisions of current law that require a 2/3 vote in a town meeting form of government before such a bond could be issued. It seemed to me that when the opponents of this bill talked to us – they didn't come to the hearing, but they called many of us at home – their complaints were not as much about the issue of the school, but they were really complaining about the town meeting form of government and that not many people showed up to town meeting, or that town meeting was inconvenient, and long, and therefore hard for a lot of people to attend. And my response

to that is that those communities, if people are concerned about the way town meeting is working in their community, they have the option of going to an SB2 form of government, where they will have the opportunity to vote all day, with a paper ballot, as Sen. Kenney noted. So it seems to me that the real complaints from opponents of this bill that have been lodged have to do with town meeting versus SB2 and not really about whether it's appropriate to allow a small minority in a community to hold up the building of a school. Thank you.

(The Chair recognized Sen. Barnes for a question of Sen. Hassan.)

SENATOR BARNES: Sen. Hassan, did you get any results from the Tuesday election in Marlborough where a school board member was being elected?

SENATOR HASSAN: I certainly didn't.

SENATOR BARNES: That would be certainly interesting to see how outraged the town was, one way or the other.

SENATOR HASSAN: It would be.

SENATOR BARNES: Thank you.

(The Chair recognized Sen. Kelly to speak.)

SENATOR KELLY: Yes, thank you, Madam President. I rise to support this bill as amended, and just really want to respond a little bit to Sen. Bragdon as well, and to the intent. Passage of this bill is not going to make any immediate difference to the Town of Marlborough and the school. However, I do have to say that, due to the situation in the town and that school, it was brought to my attention what this problem is, and this issue, and how important it is that the majority have a voice in that town. I will only say that I toured this school, and brought with me the state fire marshal, the superintendent, the principal, and others, and it was very clear that this is unsafe, that there are some very huge needs for healthcare and education in this school. And that what has happened is, time after time, and votes and votes, it continues not to be able to pass to actually build a new school, and they continue to have to renovate and pour more and more and more dollars, basically down a dark hole, and never – ends up costing the community a lot, much more than it would if they had been able to pass a 60 percent, the 3/5, and be able to build a new school. It is very clear that that's what needed to happen in that community. Again, it's not going to make a difference to that community today, but it certainly brought the problem directly to the forefront. And I realize that there are many other schools in the same situation, and that's why I think it's very important that you – and urge you to pass this bill as amended. Thank you.

(The Chair recognized Sen. Bragdon to speak.)

SENATOR BRAGDON: Thank you, Madam President. I speak in opposition to this bill, and I found it interesting that Sen. Barnes, as he introduced the bill, said that the purpose of this bill was to make a level playing field between the different forms of government. A little digging back into the record, in 1999 when it was changed from 66 percent to 60 percent for SB2 towns, the proponents of it, including then Rep. Estabrook, brought data that showed that it's twice as likely a bond will fail in an SB2 district as compared with those under traditional meeting formats. In fact, it was stated that the proposed adjustment to reduce

SB2 voting to 60 percent produces a “level playing field” to those in traditional communities, because suddenly it’s not twice as likely it’ll fail; it gives every vote, no matter what form of government, the same likelihood of passage or failure. She had statistics, and it was brought forth by other people, that it was twice as likely that a bond vote is going to fail in an SB2 town. It was stated in the testimony those who chose an SB2 as their government form are in dire need of this change. The data now show that school districts operating under SB2 do indeed have a harder time passing bond issues. Rep. Dokmo said: “All I want to say, this is not to make bond passage easier in school districts that are SB2; it’s to make it the same as traditional town meetings.”

So to say that we want to have a level playing field, the whole reason we have two different voting parameters now is because the desire was there in 1999 to make it a level playing field because people found it was twice as hard to pass a school bond in an SB2 town. So now what’s going to happen is, this gets changed to 60 percent; in a few years the SB2 towns are going to come back and say: It’s twice as hard for us to get 60 percent as those darn traditional town-meeting towns, we really need 55 percent, or maybe even 50 percent. And then a few years later, the traditional towns are going to come: Oh, we want to be the same as the SB2 towns. We’re here. We have the structure we have because it was proven – and that’s why I asked Sen. Barnes if he knew of any studies – it was proven that it was twice as hard to pass stuff in an SB2 town. I have sympathy for those towns who can’t pass bonds. My town has seen that before. We’ve seen 82 percent in an SB2 town and 75 percent in an SB2 town, because of the diligence of the school board. But to say that this makes level playing field really undoes everything that was done several years ago. And finally, I guess more of a question for the Chair: Shouldn’t this be going to Finance. This is going to make it twice as easy now for towns and school districts to pass bonds, which is going to increase state building aid. Why isn’t this going to Finance?

PRESIDENT LARSEN: The Senate Finance chair did not select Senate Bill 479, nor does it have a fiscal note.

SENATOR BRAGDON: Apparently it’s a “trivial” amount.

The question is on the adoption of Ought to Pass as Amended on SB 479.

A roll call was requested by Sen. Kenney, seconded by Sen. Bragdon.

The following Senators voted Yes: Reynolds, Sgambati, Burling, Cilley, Janeway, Kelly, Gottesman, Foster, Larsen, Barnes, D’Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Kenney, Odell, Roberge, Bragdon, Clegg, Gatsas, DeVries, Letourneau, Downing.

Yeas: 14 - Nays: 10

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

Sen. Letourneau is in opposition to the amendment on SB 479.

SB 484, establishing a commission to investigate alternatives to incarceration for nonviolent offenders and cost savings related to such alternatives. Public and Municipal Affairs Committee. Ought to Pass with Amendment, Vote 2-0. Senator Hassan for the committee.

Public and Municipal Affairs
March 10, 2008
2008-0949s
04/09

Amendment to SB 484

Amend the bill by replacing section 2 with the following:

2 Membership and Compensation.

I. The members of the commission shall be as follows:

(a) One member of the senate, appointed by the president of the senate.

(b) Three members of the house of representatives, appointed by the speaker of the house of representatives.

(c) The commissioner of the department of corrections, or designee.

(d) The attorney general, or designee.

(e) One member appointed by the chief justice of the New Hampshire supreme court.

(f) One member from the New Hampshire Sheriff's Association, appointed by that association.

(g) One member from the New Hampshire Association of Chiefs of Police, appointed by that association.

(h) One member from the New Hampshire Public Defender's Office, appointed by that organization.

(i) One member from the New Hampshire Police Association, appointed by that association.

(j) One member from the National Alliance on Mental Illness-New Hampshire, appointed by that association.

(k) One county attorney in New Hampshire appointed by the New Hampshire Association of Counties.

(l) One county superintendent in New Hampshire appointed by the New Hampshire Association of Counties.

II. Legislative members of the commission shall receive mileage at the legislative rate when attending to the duties of the commission.

Amend the bill by replacing section 4 with the following:

4 Chairperson; Quorum. The members of the commission shall elect a chairperson from among the members. The first meeting of the commission shall be called by the first-named senate member. The first meeting of the commission shall be held within 45 days of the effective date of this section. Six members of the commission shall constitute a quorum.

SENATOR HASSAN: Thank you, Madam President. I move that Senate Bill 484 ought to pass with amendment. This amended bill establishes a commission to investigate alternatives to incarceration for nonviolent offenders and cost savings related to such alternatives. With more money needed for the construction of new prison space, the Committee agrees that it is worthwhile to explore other ways in which to deal with nonviolent offenders beyond traditional incarceration, which I note now costs about \$31,000 a year for each inmate at the state prison. The Public and Municipal Affairs Committee requests your support for this amended legislation. Thank you.

(The Chair recognized Sen. Barnes for a question of Sen. Hassan.)

SENATOR BARNES: Sen. Hassan, have you had a chance – I know we talked about it in joint caucus today – about how many commissions that we have – study committees we have put forth. Have you had a chance, or any of your staff, to put that number together yet?

SENATOR HASSAN: No, I haven't, since you just asked about it this morning and we've been here since.

SENATOR BARNES: Maybe next Thursday, do you think we could ...

SENATOR HASSAN: Well, we'll certainly work on that.

SENATOR BARNES: Thanks a lot.

The question is on the adoption of Committee Amendment 0949s. Committee Amendment 0949s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 484.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

MOTION TO REMOVE FROM THE TABLE

Sen. Reynolds moved to have SB 508-FN-L removed from the table. Motion adopted.

SB 508-FN-L, relative to municipal deposits. Public and Municipal Affairs Committee. Ought to Pass with Amendment, Vote 5-0. Senator Barnes for the committee.

The question is on the adoption of the Committee Amendment 0832s.

Senate Public and Municipal Affairs

March 4, 2008

2008-0832s

08/04

Amendment to SB 508-FN-LOCAL

Amend the bill by replacing all after the enacting clause with the following:

1 Municipal Deposits. Amend RSA 41:29, VII to read as follows:

VII. The treasurer shall ensure that all moneys remitted shall be deposited at least on a weekly basis, or daily whenever funds remitted from all departments collectively totals \$500 or more. Such deposit function may be delegated pursuant to paragraph VI. However, failure to ensure that funds are being deposited on a timely basis as required by this paragraph shall be cause for immediate removal from office pursuant to RSA 41:26-d. ***In any municipality where there is no bank or other depository institution within the municipality or within 10 miles of that municipality, the treasurer shall make deposits consisting of funds remitted from all departments and collectively totaling \$1,500 or more on a weekly basis.***

2 Municipal Deposits; Banking Procedures. Amend RSA 41:9, VI to read as follows:

VI. The selectmen shall be responsible for establishing and maintaining appropriate internal control procedures to ensure the safeguarding of all town assets and properties ***except for those procedures relative to municipal deposits established in RSA 41:29, VII.***

3 Effective Date. This act shall take effect 60 days after its passage.

SENATOR REYNOLDS: Thank you, Madam President. First, Madam President, I want to thank the members of the Committee that supported this bill. The bill is a technical amendment to a municipal deposit law that we passed, and it really affects a lot of our small communities. In my case, the Town of Dorchester has no bank in the town. In fact, it's

very far away from a local bank, and the statute, as presently drafted, requires the town treasurer to go to the town every day, if the deposit is in excess of \$500. And given the expense of gas and the cost to towns, and lost time, this really has been a burden. And I want to thank again the Committee for its support. The committee amendment was a fantastic amendment. There was a minor problem with it in terms of the amount of the money that was sequenced for requiring going to the bank. So at this point, I'd respectfully ask the body to vote down the committee amendment. I will be offering a floor amendment. Thank you, Madam President.

(The Chair recognized Sen. Gatsas to speak.)

SENATOR GATSAS: Thank you, Madam President. Can we take a look at the committee amendment first, before we decide to vote – I mean the floor amendment, before we vote down the committee amendment?

PRESIDENT LARSEN: We can – at the sponsor's request, we can distribute the floor amendment at this time. And you may wish to speak to that as it's being distributed.

SENATOR REYNOLDS: I have no objection to distributing the floor amendment at this time. Thank you, Madam President. And if I may, Your Honor. (Laughter) Wrong place.

PRESIDENT LARSEN: I'm feeling very "honorable," thank you.

SENATOR REYNOLDS: Thank you, Madam President. Floor Amendment 1000s is what is being offered. And just so you understand what the minor change is, the committee amendment added language that allowed treasurers discretion to go to the bank if there's \$1500 or more, on a weekly basis, if there's no bank in the town. All we've done with this floor amendment is change line 5, to make that dollar amount parallel to the committee amendment. So I would ask for your support of this floor amendment. Thank you, Madam President.

(The Chair recognized Sen. Gatsas for a question of Sen. Reynolds.)

SENATOR GATSAS: Senator, the floor amendment is not the same as the committee amendment. The committee amendment, if you look at line 13, adds something in there that's not in the bill. Did you want to eliminate that with your floor amendment? From 12 to 15.

SENATOR REYNOLDS: I'm looking for my committee amendment, Sen. Gatsas. I'm not sure ... thank you. Yes. I think – thank you, Sen. Gatsas, for bringing that to my attention. I guess I would just rescind my request to vote down the committee amendment, and I would ask that the body pass the committee amendment, and then I will offer the floor amendment as well.

**The question is on the adoption of Committee Amendment 0832s.
Committee Amendment 0832s adopted.**

Sen. Reynolds offered a floor amendment.

Sen. Reynolds, Dist. 2

March 12, 2008

2008-1000s

08/09

Floor Amendment to SB 508-FN-LOCAL

Amend the bill by replacing section 1 with the following:

1 Municipal Deposits. Amend RSA 41:29, VII to read as follows:

VII. The treasurer shall ensure that all moneys remitted shall be deposited at least on a weekly basis, or daily whenever funds remitted from all departments collectively totals ~~[\$500]~~**\$1,500** or more. Such deposit function may be delegated pursuant to paragraph VI. However, failure to ensure that funds are being deposited on a timely basis as required by this paragraph shall be cause for immediate removal from office pursuant to RSA 41:26-d. ***In any municipality where there is no bank or other depository institution within the municipality or within 10 miles of that municipality, the treasurer shall make deposits consisting of funds remitted from all departments and collectively totaling \$1,500 or more on a weekly basis.***

SENATOR REYNOLDS: Thank you, Madam President. I would offer the body Floor Amendment 2008-1000s, and ask the body's granting of that as well. Thank you.

The question is on the adoption of Floor Amendment 1000s.

Floor Amendment 1000s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 508-FN-L.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 307-FN-L, exempting Purple Heart plate recipients from number plate and registration fees. Transportation and Interstate Cooperation Committee. Ought to Pass, Vote 4-0. Senator Letourneau for the committee.

MOTION TO TABLE

Sen. Letourneau moved to have SB 307-FN-L laid on the table.

Motion adopted.

LAID ON THE TABLE

SB 307-FN-L, exempting Purple Heart plate recipients from number plate and registration fees.

SB 361, relative to the widening of Interstate 93. Transportation and Interstate Cooperation Committee. Ought to Pass with Amendment, Vote 4-0. Senator Letourneau for the committee.

Sen. Letourneau, Dist. 19

March 5, 2008

2008-0848s

06/09

Amendment to SB 361

Amend the bill by replacing section 1 with the following:

1 Priority Construction. The various construction projects that constitute the 18-mile widening of Interstate 93 from the Massachusetts border to the split of Interstate 93 in Manchester shall be given highest priority by the commissioner of the department of transportation once work has commenced on any one of the projects.

2008-0848s

AMENDED ANALYSIS

This bill directs the commissioner of transportation to give highest priority to the projects involving the widening of Interstate 93 from Manchester to the Massachusetts border.

SENATOR LETOURNEAU: Thank you, Madam President. I move Senate Bill 361 ought to pass with amendment. This bill would direct the Commissioner of Transportation to make the widening of I-93 a priority. The widening of I-93 has been on the 10-year Highway Plan since its inception in 1985. Somehow, each time that the widening comes into play or is suggested, there's always one reason or another to delay the project. Once again, the project's being delayed at Exit 3. This would be a disaster for the corridor. All we would do is move the problem from Exit 1 to Exit 3, and not solve the problem that exists from Exit 3 to the Manchester line, where most of the fatal, and most of the accidents occur. Please support this very important piece of legislation, especially for the southern tier of the state, and join the Transportation and Interstate Cooperation Committee in voting this bill ought to pass with amendment. Thank you.

(The Chair recognized Sen. Fuller Clark for a question of Sen. Letourneau.)

SENATOR FULLER CLARK: Sen. Letourneau, I do have a question. I might have two questions. Could you first tell me what is the status with regard to the lawsuit and the expansion of I-93, and how might this impact on that.

SENATOR LETOURNEAU: It has no impact on the lawsuit. As soon as the – all of the problems with the lawsuit are resolved, the building of the highway will continue. This only has to do with once the highway is started to be built, that we continue building it until we finish it. And as far as the federal highway administration is concerned, they have already given us our permits, and, as you know, there was a lawsuit that held it up, and most of the issues in that lawsuit have been resolved. We're doing a traffic study. And I just got something in the mail yesterday, there's something coming up in Salem. Sen. Downing and I will both be there. I can give you more information on that at that time.

SENATOR FULLER CLARK: Okay. And the second question is, can you tell me what is the current price tag on this entire project that you're talking about wanting to go through, and is it being phased or is it going to be done all at one time?

SENATOR LETOURNEAU: Well, it's a little more complicated than that. Let me go back to 1999, when I passed the first piece of legislation to make the widening of I-93 a state priority. At that time the proposed cost of that highway was \$200 million. Shortly after we got that passed, it went up to somewhere in the \$400 million range. Today we're hearing it's about \$800 million, total, over a period of 10 years. The process that we're talking about today will probably take 10 years to do, unless something else comes up and comes up with a giant pot of money to get that thing finished. What we're doing here today is saying, because it got removed from the 10-year Highway Plan, in its latest inception, is to make sure that it stays on there as they – as every two years when this highway plan comes up, I may not be here, and I want to make sure that this highway doesn't get left off on the corridor, on some dusty shelf somewhere. So once we start the widening process, which will take a long time, that we will continue it till we get to Manchester.

SENATOR FULLER CLARK: And one final question, if I may. By passing this legislation, are we saying that this project shall have priority over any other transportation project in the state, including the fixing of our red-line bridges, and the needed current repairs to our roads?

SENATOR LETOURNEAU: No. The red-listed bridges are the highest priority. There is already a piece of legislation on the books now that makes the state – Interstate 93 project a priority. This just says that that priority will be completed when we started. That's all this says. It has nothing to do with red-listed bridges. Those will continue to be fixed in the order that they were set up by the Department of Transportation. This also doesn't tell the Department of Transportation how they will go about doing this project. That's still left to them. I think that's what the amendment did. When I brought the bill in, there was some confusion as to the way the language was worded, that I was saying that it had to be one single project, and I wanted to clear that up. The amendment, I believe, clears that up.

SENATOR FULLER CLARK: Thank you.

SENATOR LETOURNEAU: Thank you, Ma'am.

(The Chair recognized Sen. Sgambati to speak.)

SENATOR SGAMBATI: Thank you, Madam President. My concern, as I read the committee amendment, is that it clearly states that the Interstate 93 shall be given the highest priority by the Commissioner of the Department of Transportation. That puts it in front of other projects. And while I understand the importance to the southern part of the state, as was suggested by Sen. Letourneau, it's also been suggested to me that the widening of 93 would ensure that tourists could reach the Lakes Region and the North Country faster and more conveniently. The problem is, however, by making this the first priority, what they will arrive to find in the Lakes Region, and in the North Country are potholes, dangerous intersections, and other problems that have been created and continue because of the delay of projects around the state. So I would urge you to vote against this bill. Thank you.

Recess/Out of recess.

The question is on the adoption of Committee Amendment 0848s on SB 361.

(The Chair recognized Sen. Letourneau to speak.)

SENATOR LETOURNEAU: Sen. Sgambati, did you have some questions for me? You were bringing up the potholes and you were bringing up some other issues with the priorities. Currently in law the widening of I-93 is a State priority. You don't have those questions? 'Cause I heard you raise them. You're all set?

SENATOR SGAMBATI: No. Mine was a statement rather than a question. I'm concerned about district projects around the state that have been delayed in the last revision of the plan, and may be further delayed by this prioritization.

SENATOR LETOURNEAU: Okay.

SENATOR SGAMBATI: Thank you.

SENATOR LETOURNEAU: What I wanted to say to that is that this is – the widening of I-93 is a federal project, it's a federal highway, it's done with federal dollars. And that the maintenance of the highways is a separate fund within the highway fund. That doesn't take dollars away from that. So ...

The question is on the adoption of Committee Amendment 0848s. Committee Amendment 0848s adopted.

(The Chair recognized Sen. Burling to speak.)

SENATOR BURLING: Thank you, Madam President. This issue is truly an issue about which we could argue back and forth for the rest of the afternoon. Let's not. I wanted to make a point that is not directly related to the asphalt and concrete of Route 93. I want to make a comment about the way we are developing transportation policy in this state, and the way we are proposing to pay for it. By any statement, by any analysis, by any review, the way we have managed the reconstruction of Route 93 is a disaster. We have talked about it for almost 15 years. We have projected expenses and watched them double or quadruple every three years. And we are now in a situation in which we are making a commitment to rebuild the twenty-whatever-three miles it is from the border up to Manchester. But we aren't developing a realistic plan to do it in an orderly fashion that will constrain the costs. We know that inflation is now exceeding the cost of money; that is to say, time is more expensive than bonding costs. That's one point I want to make. That's not good rational decision-making. So when Sen. Letourneau says I want to get this done, my answer to that is: If we're gonna do it, we ought to do it promptly or drop it. Because the way we're doing it now is the most expensive we can do.

I also want to say last year this Legislature passed the New Hampshire Rail Transit Authority bill, and as I've said a couple of times, I was lucky enough to wind up as the chair. That is a direct and important mandate to a new agency of state government. The expectation is we're going to get a train running from Concord through Manchester, Merrimack, Nashua, to North Station. I believe that is an important transportation policy initiative. But we need to be thinking about how we're going to do that. Where's the money gonna come from, and how does that fit in terms of the priorities we're struggling over, the 93 issue, the issues to the North, can I bring in the Mildred Long Bridge? We need to pay attention to this, I guess is what I'm saying; we need to take charge of these issues and act responsibly. There are two bills that we're going to see, either next week or the week after, that – it'll be next week, I guess, that talk about transportation policymaking. We ought to, all of us, look at those bills, try to pay attention to what's in them, and recognize that we have a responsibility to start doing this policymaking in an efficient and effective way. Otherwise, we are wasting taxpayers' money and our own time. Thank you. That's all I wanted to say.

(The Chair recognized Sen. Letourneau to speak.)

SENATOR LETOURNEAU: I think we've heard enough about this. I think we can go forward. Thank you very much.

(The Chair recognized Sen. Janeway to speak.)

SENATOR JANEWAY: Thank you, Madam President. I simply want to rise in self-defense. I noticed that the hearing report lists me as a sponsor of the bill. It's true I was in the room at the time the bill was discussed, waiting to sponsor another bill, but I am not a sponsor of this bill. And I think that may be true for Sen. Kelly and Martha Fuller Clark as well. Thank you.

PRESIDENT LARSEN: A corrected hearing report was issued this morning on that, for anyone who wants to have a corrected hearing report with the appropriate sponsors.

(The Chair recognized Sen. Burling to speak.)

SENATOR BURLING: I tried to tell Sen. Janeway this at the start: It's very important to figure out who you hang out with here in the Senate, because the strangest things can happen.

Recess/Out of recess.

The question is on the adoption of the Ought to Pass as Amended on SB 361.

A roll call was requested by Sen. Letourneau, seconded by Sen. Roberge.

The following Senators voted Yes: Gallus, Reynolds, Kenney, Burling, Odell, Roberge, Kelly, Clegg, Larsen, Gatsas, Barnes, DeVries, Letourneau, D'Allesandro, Downing, Hassan.

The following Senators voted No: Sgambati, Cilley, Janeway, Bragdon, Gottesman, Foster, Estabrook, Fuller Clark.

Yeas: 16 - Nays: 8

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 424, relative to prohibiting ATV and trail bike use on state-owned rail trails acquired using federal funds. Transportation and Interstate Cooperation Committee. Inexpedient to Legislate, Vote 3-0. Senator Letourneau for the committee.

MOTION TO TABLE

Sen. Letourneau moved to have SB 424 laid on the table.

Motion adopted.

LAIID ON THE TABLE

SB 424, relative to prohibiting ATV and trail bike use on state-owned rail trails acquired using federal funds.

SB 503-FN, relative to authorizing temporary registrations of off-highway recreational vehicles for nonresidents. Transportation and Interstate Cooperation Committee. Ought to Pass with Amendment, Vote 3-1. Senator Clegg for the committee.

Transportation and Interstate Cooperation

March 5, 2008

2008-0862s

10/01

Amendment to SB 503-FN

Amend RSA 215-A:21, V as inserted by section 2 of the bill by replacing it with the following:

V. All OHRVs except conventional motor vehicles registered for highway use ~~[and those registered pursuant to paragraph IV]~~ shall be registered at the fee provided in RSA 215-A:23, and shall be furnished a registration plate or decals of a design and color as chosen by the executive director. Said registration plate or decals shall be attached securely on the front and rear of the vehicle, in an unobstructed manner, as high as possible or at a location designed by the manufacturer. ***A nonresident registering an OHRV for a 5-day period shall be issued a temporary registration by the executive director. The executive director shall determine the design, color, and placement of temporary registration decals. Temporary registrations may not be transferred.***

Amend the introductory paragraph of RSA 215-A:23, V-a as inserted by section 3 of the bill by replacing it with the following:

V-a. Temporary Registration for Nonresidents – \$32 for each non-transferable, 5-day registration upon presentation of a valid out-of-state driver's license issued to a person 18 years of age or older. From each fee collected pursuant to this paragraph:

2008-0862s

AMENDED ANALYSIS

This bill allows nonresidents to be issued a 5-day temporary registration for an OHRV to be operated in this state.

SENATOR CLEGG: Thank you, Madam President. I move Senate Bill 503 ought to pass with amendment. The bill will allow nonresidents to purchase a temporary registration for an OHRV to be operated in this state. Many tourists come to our state for our trails, and instead of having to purchase a yearly registration, they will now be able to purchase a 5-day registration to coincide with long weekends. According to our great Senator from the North Country, this bill will increase tourism by attracting new riders and will raise new revenue, such as rooms and meals taxes. Please join Transportation and Interstate Cooperation Committee in voting this bill ought to pass with amendment. Thank you.

The question is on the adoption of Committee Amendment 0862s.

Committee Amendment 0862s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 503-FN.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 516-FN-L, relative to aid for county bridges. Transportation and Interstate Cooperation Committee. Ought to Pass with Amendment, Vote 4-0. Senator DeVries for the committee.

Transportation and Interstate Cooperation

March 5, 2008

2008-0867s

03/01

Amendment to SB 516-FN-LOCAL

Amend the bill by replacing sections 1-2 with the following:

1 Bridge Aid; Application. Amend RSA 234:5 to read as follows:

234:5 Application. The selectmen of a town, the mayor of a city, or the county commissioners for an unincorporated place may annually apply to the commissioner of transportation in the manner prescribed by the commissioner for bridge aid on a class II, IV, or V highway. *The county commissioners may annually apply to the commissioner of transportation in the manner prescribed by the commissioner for bridge aid for a county-owned bridge.*

2 Bridge Aid; How Cost Borne. Amend RSA 234:10 to read as follows:

234:10 Bridge Aid; How Cost Borne. When public convenience and necessity require the construction or reconstruction of any bridge on a class II, IV, or V highway the cost shall be borne 1/5 by the municipality and 4/5 by the state. *When public convenience and necessity require the reconstruction of any county-owned bridge, the cost shall be borne 1/5 by the county and 4/5 by the state.*

2008-0867s**AMENDED ANALYSIS**

This bill makes county-owned bridges eligible for bridge aid.

SENATOR DEVRIES: Thank you, Madam President. I move Senate Bill 516-FN-L ought to pass with amendment. This bill extends the bridge aid grant program for municipalities to also include counties. Currently there is only one county-owned bridge in the state. It is within the Gunstock community and is – ooh, long day it has been – it is in need of repair. The legislation would allow them to apply for aid in the same manner that a municipality might. The amendment removes the wording “Class III highway” from the legislation because the term is not applicable to this circumstance. Please join the Transportation and Interstate Cooperation Committee in voting this bill ought to pass with amendment. Thank you.

The question is on the adoption of Committee Amendment 0867s. Committee Amendment 0867s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 516-FN-L.

Motion of Ought to Pass as Amended adopted, bill ordered to Committee on Finance (Rule 26).

Sen. Sgambati is in favor of SB 516-FN-L.

SB 533, establishing a committee to study age-based driver's license renewal testing. Transportation and Interstate Cooperation Committee. Ought to Pass with Amendment, Vote 4-0. Senator Kelly for the committee.

Transportation and Interstate Cooperation**March 5, 2008****2008-0866s****03/01****Amendment to SB 533**

Amend subparagraph I(a) of section 2 of the bill by replacing it with the following:

(a) Two members of the senate, appointed by the president of the senate.

Amend the bill by replacing section 4 with the following:

4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named senate member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Two members of the committee shall constitute a quorum.

SENATOR KELLY: Thank you, Madam President. I move SB 533 ought to pass with amendment. This bill would establish a committee to study aged-based driver's license renewal testing. New Hampshire is the only state whereby the elderly must complete a road test. The study committee would focus on age-based driving tests versus evidence-based driving tests. The amendment reduces the committee Senate members from three to two, and reduces the number of members needed for a quorum. Please join the Transportation and Interstate Cooperation Committee in voting this bill ought to pass with amendment. Thank you.

**The question is on the adoption of Committee Amendment 0866s.
Committee Amendment 0866s adopted.**

(The Chair recognized Sen. Reynolds to speak.)

SENATOR REYNOLDS: Thank you, Madam President. I rise in support and as the prime sponsor of SB 533. I want to thank the Committee for passing this bill. This bill was brought to my attention by a constituent indicating that New Hampshire's only one of three states that uses a road test in age-based driver's license. And with the fact that as a country we're an aging population and many seniors are living longer and living healthy lives and working. I think studying these driver's license restrictions is a good thing and good policy, and I want to thank the Committee. Thank you.

The question is on the adoption of Ought to Pass as Amended on SB 533.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 306-FN, relative to allowing video gaming in Coos county, building a casino in Berlin, and establishing a fund to assist with the payment of property taxes. Ways and Means Committee. Inexpedient to Legislate, Vote 3-2. Senator Reynolds for the committee.

MOTION TO TABLE

Sen. Reynolds moved to have SB 306-FN laid on the table.

Motion adopted.

LAI D ON THE TABLE

SB 306-FN, relative to allowing video gaming in Coos county, building a casino in Berlin, and establishing a fund to assist with the payment of property taxes.

Sen. Letourneau is in opposition to the motion to table on SB 306-FN.

SB 330-FN, relative to video lottery machines at certain pari-mutuel facilities. Ways and Means Committee. Inexpedient to Legislate, Vote 3-2. Senator Janeway for the committee.

SENATOR JANEWAY: Thank you, Madam Chair. I mean, Madam President. Excuse me, it's getting late. I move that Senate Bill 330-FN is inexpedient to legislate. This bill allows video gaming at the grand hotels and racetracks throughout the state. I had thought that the discussion of the previous bill would cover a number of the things and I would not have to repeat them, but I will cover them here now. The Ways and Means Committee heard considerable testimony during two lengthy sessions on both of these bills. The proponents cited that direct economic benefits of construction and operation, and the positive contribution to state revenues. However, the Committee heard considerable testimony in opposition, that there is a downside to gambling in general and video slots in particular, in increased crime, strains on families, and the strains on the social fabric of communities, all of which must be weighed. In short, there was no common ground on this issue. The majority of the Committee concluded that expanded gambling would not be in the best interest of the state. Please join me in voting SB 330 inexpedient to legislate. Thank you.

(The Chair recognized Sen. Downing to speak.)

SENATOR DOWNING: Thank you, Madam President. I rise in opposition to the motion of ITL. I represent the community where Rockingham Park is located. The facility's been in my town for over a hundred years. During that time, the business has experienced many changes. In recent years, patronage has declined with the introduction of new and improved gaming facilities in neighboring states. New Hampshire needs only to look back to the 1950's and '60s when approximately 10 percent of this state's revenues were generated from Rockingham Park. Senate Bill 330 would provide the ability for this type of business to again become competitive in its industry. It would provide much-needed jobs to New Hampshire, and it would provide 'em to New Hampshire residents. Because under RSA 284:3, 85 percent of all employees have to be New Hampshire residents. That's the only industry in the state that falls under that. In addition, this bill will provide much-needed revenue the State could use for money to pay for the litany of financial holes we are experiencing: transportation and infrastructure costs. It could be used to address the shortfall in the New Hampshire Retirement System, and provide benefits while keeping contribution rates low. Further, this legislation would generate revenue through the BET and BPT. It would increase property tax values, provide money for safe thoroughbred breeding programs, promote open space, and support the local community in their needs, and many more small but not insignificant programs.

The community of Salem has voted on this twice and voted to allow the machines to go into the racetrack. This would also allow them to vote again so their voices will be heard. I suggest before the Senate acts hastily and disregards this industry altogether, we should remember our financial limitations and the current economic conditions, and ask ourselves how are we going to fund our current and future commitments to the people of this Granite State. This legislation is not about starting a new business; it's about allowing a business to grow and compete in today's market; it's about new jobs; it's about additional revenue to the State and the community. Thank you.

(The Chair recognized Sen. Clegg to speak.)

SENATOR CLEGG: Thank you, Madam President. I rise in opposition to the committee report. Who're we kidding? When I came up to Concord this morning, I drove through Manchester, that's that community where it still takes 2/3 to build a school bond, and there was a big sign that said, "Buy your Powerball ticket, \$230 million." When I went to a chamber of commerce event in Salem, I watched all the tables full of people playing Texas Hold'em. Texas Hold'em makes a hundred million dollars a year. How much money do we make selling lottery tickets? And let's face it, how many buses go to Foxwoods? Buses, nothing. How many of us drive to Foxwoods or Mohegan Sun, or go to Las Vegas, or go to Aruba and hit the parlors there. Who are we kidding? It's not that we don't do it already, 'cause we do. We constantly hear how we need to find another method to raise money in this state to take the burden off the property tax owner. But when we find something that everybody seems to participate in, something nobody ever seems to complain about, we keep saying no, the State shouldn't take a piece. So once again we will eliminate an avenue to lower property taxes, we'll allow the private enterprises to continue to collect a hundred million just off Texas Hold'em; we'll still run Powerball, we'll still sell lottery tickets. Thirty-dollar lottery tickets.

We'll still do all of that, and then sit there and say: But we're not going to take the dirty money. Well, if the money from gambling is dirty, *all* the money from gambling is dirty, and we shouldn't be taking it. But I suggest to you that if gambling money was bad, then the churches wouldn't hold Bingo, because what is Bingo? Bingo's gambling. It might be at a lower level, I don't know. I don't know what the pots are anymore. So I say to this chamber, let's stop kidding ourselves, let's stop kidding the outside community, let's admit that we've already got gambling in this state. We make a lot of money; since 1964, I think, we've made a ton of money off gambling. And let's give the property taxpayer a small break and take a piece of the action now. Because everybody's doing it, everybody's going to continue to do it, and we're really not kidding anybody but ourselves. Thank you, Madam President.

(The Chair recognized Sen. Barnes for a question of Sen. Clegg.)

SENATOR BARNES: Sen. Clegg, you seem to know a lot about this and you do a lot of homework. And you mentioned the fact that there's a hundred – what was that figure, that Texas Hold'em?

SENATOR CLEGG: A hundred million dollars.

SENATOR BARNES: How much of that hundred million dollars comes into the State coffers, Senator Clegg?

SENATOR CLEGG: As far as I'm aware, zero.

SENATOR BARNES: We don't get anything out of that Texas Hold'em down there at the track?

SENATOR CLEGG: Course not. That would be taking dirty money, Senator.

SENATOR BARNES: Oh. I am surprised that we don't get any money out of that.

(The Chair recognized Sen. Gallus to speak.)

SENATOR GALLUS: Thank you, Madam President. I'm appalled, Sen. Clegg, to find out that there's gambling in the State of New Hampshire. And he stole most of my thunder, actually. But I agree, I find that – I think I've found a funding source for fiscal capacity disparity aid. And it happens to be this particular bill. I also agree it's time to wake up and realize that the "gaming-genie" is all ready out of the bottle. Because those same Bingo games, those Hold'em poker games – Texas Hold'em poker, and of course the State Lottery, I assume that's gambling, and it's already here. In fact, I think I have my – the winning Powerball numbers right here in my pocket. I'm just helping education. (Laughter) That's right. So I think it's already here. We're kidding ourselves. I sat in the committee meeting and listened to testimony. I had a good local Father from a parish in Berlin, New Hampshire, who showed up. I don't think he wants competition with the Bingo games on Saturday night. I just think that we're already in that business, and we're only being hypocrites to think that it's not here. I think that we should be taking advantage of that money. I want you to please evaluate this bill, carefully. Because it does create jobs in the State of New Hampshire, and it creates revenues for the State of New Hampshire at a time when we're losing jobs, and of course we have a declining revenue base. It threatens to push the State of New Hampshire into serious economic crisis. I ask you to vote down the ITL motion and vote this bill ought to pass. Thank you.

(The Chair recognized Sen. D'Allesandro to speak.)

SENATOR D'ALLESANDRO: Thank you, Madam President. I realize that the hour is late and that attention spans are limited. But I want to just give you some significant information to digest. This is an economic recovery job creation package. And when you reduce things to the lowest common denominator, they become an economic issue. I bought a gallon of milk yesterday, it was \$3.80. I filled my car with gasoline, it cost me \$33. Lowest common denominator, poverty have its privileges. It's an economic issue. If we can divide the bill into two parts, the economic recovery aspect of this bill: This bill would produce one billion dollars' worth of new construction in the State of New Hampshire. One *billion* dollars' worth of new construction. Jobs: carpenters, plumbers, Sheetrockers, construction workers. These jobs would be available over a two-to-three-year span. That's economic recovery, the creation of jobs. When the economic recovery gets done, we have job creation. This bill will create about 4,000 new jobs. We are losing jobs all over this state. We are losing good-paying jobs. These would be good-paying jobs. Unions represent the constituencies at the local venues, Rockingham Park and Seabrook. The Teamsters, the Autoworkers, represent these workers. That means decent wages and good benefits. So economic recovery, job creation: two very significant issues. That's the public at large. What about the State? The State would get 43 percent of the income. Forty-three percent. Now, Delaware has three venues. Their tax rate is 33 percent. Since expanded gaming has been instituted in Delaware, \$2 billion has gone to the State of Delaware. Two *billion*, with a "b." That's at a 33 percent tax rate. Our tax rate is nine points higher. The State of Connecticut, at a 25 percent tax rate, only 25 percent of the slot machine revenue, has received \$4.5 billion. That's 25 percent. The State of Rhode Island, which has the highest tax rate in the country at 61 percent, has received two billion, one hundred million dollars. So as Jerry Maguire said, "Show me the money." Well, that's where the money is. Now, we all want to spend money. I say no to all those bills in Finance, but I am now showing you economic recovery job creation, and about \$300 million a year to the State of New Hampshire. Now, the people that I represent want to work, they have a desire to work. And in years past, they worked at Rockingham Park. My father-in-law worked at Rockingham Park, he was a gate attendant at Rockingham Park. He made a decent wage, came home at night, and enjoyed his job. Those jobs have disappeared. This plan would recreate those jobs at a much higher level. What do we do in addition to the taxes. The local communities must approve the venues. They must approve it. Salem has had two votes, both of which have been approval of expanded gaming at the Park. Belmont is having a vote later this month. Seabrook has had votes. Derry had a vote, an unofficial vote. So people have voted to accept this premise a number of times. Hasn't the time come when we take advantage of this revenue source. We passed this revenue source ten years ago in this body, with 13 votes. It was not accepted by the House. We have given away over \$1 billion' worth of revenue, had the House accepted our bill and passed it, ten years ago. We have only a couple of people who were here that night. I think Sen. Roberge was here that night. Who else? And Sen. Barnes was here that night. Sen. Larsen was here that night. We have given up a billion – over a billion dollars in revenue. Well, we are in an economic situation, a negative economic situation. This is our opportunity to do something to address that.

Now, I've said this on many, many occasions: If you got a better idea, bring it forward, and let's debate it on the floor of the Senate. Let's debate it. You bring a *better* economic opportunity, *better* job creation and more money to the State of New Hampshire, I'm all for it. Bring it forward and let's vote on it. And we won't have to cut 50 million, we won't have to cut a hundred million next year, and we'll be moving forward. This is something that I believe very strongly in. As Sen. Downing has pointed out, we have had racing at Rockingham Park for a hundred years. The Honorable Cardinal Cushing would come up to Rockingham Park and solicit our help, year after year, after year after. And Lou Smith gave 'em his help and took tons of money from the State of New Hampshire down to the Boston Arch Diocese. Tons of money. At one time, the Rockingham revenue represented ten percent of the income for this state. So, we've done it before. I would hope that we could see our way clear to do this again. It's an opportunity, as I said, for economic development, for job creation, for tax revenue for the State of New Hampshire, and it's something that others have done. And let me end by saying this: When I started this ten years ago, there wasn't any activity in Maine, there wasn't any activity in West Virginia, there wasn't any activity in Mississippi. Twenty-nine states have followed our lead, in essence. This is our chance to take advantage of a situation that can provide us with economic opportunity. Thank you, Madam President.

(The Chair recognized Sen. Clegg for a question of Sen. D'Allesandro.)

SENATOR CLEGG: Senator, you spoke about some jobs and the fact that there was organization amongst the workers and that there were high rates of pay. But wouldn't those jobs also translate into the local community? And of course construction is something I've made my life about. And wouldn't those same people be looking for bigger houses or maybe some additions? So doesn't it translate into, on the local economy, a lot more jobs as well?

SENATOR D'ALLESANDRO: Absolutely. Absolutely. It would be a real positive aspect for the local economy.

SENATOR CLEGG: Further question? Senator, when I was at the Salem Chamber of Commerce, we happened to be at the – that day they were at Rockingham Park, and there was a lot of Texas Hold'em going on. And they announced that in the last year they had given over a million dollars to different charities. Do you see that perhaps charities – a lot of the, the ones we need, like the Liberty House in Manchester for homeless veterans, do you see that this might actually help some of those charities that just can't seem to get enough money?

SENATOR D'ALLESANDRO: Absolutely.

SENATOR CLEGG: Thank you.

Recess/Out of recess.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on SB 330-FN.

(The Chair recognized Sen. Downing for a question of Sen. D'Allesandro.)

SENATOR DOWNING: Senator, I was just curious, reading the bill. How much does the State get in licensing fees?

SENATOR D'ALLESANDRO: The State gets thirty ... \$15 million from a horse track, 5 million, the dog tracks, and 5 million from each of the Coos County venues, if they accept it. It'll be upfront. The upfront possibility is \$45 million.

SENATOR DOWNING: Thank you.

(The Chair recognized Sen. Gottesman for a question of Sen. D'Allesandro.)

SENATOR GOTTESMAN: Sen. D'Allesandro, as chairman of Finance, at this point in our proceedings, would you be taking both the prior bill that we just tabled, or the bill that we're now considering?

SENATOR D'ALLESANDRO: Finance would waive on both of the bills.

SENATOR GOTTESMAN: Thank you.

MOTION TO TABLE

Sen. Downing moved to have SB 330-FN laid on the table.

Motion adopted.

LAIID ON THE TABLE

SB 330-FN, relative to video lottery machines at certain pari-mutuel facilities.

Sen. Letourneau is in opposition to the motion to table on SB 330-FN.

SB 493, allowing certain tax exempt organizations to be defined as charitable organizations for purposes of games of chance operations. Ways and Means Committee. Ought to Pass with Amendment, Vote 2-0. Senator D'Allesandro for the committee.

Senate Ways and Means

March 10, 2008

2008-0961s

08/09

Amendment to SB 493

Amend RSA 287-D:1, III(a) as inserted by section 1 of the bill by replacing it with the following:

(a) "Charitable organization" means any bona fide religious, charitable, civic, veterans', or fraternal or church organization, including police and firemen's organizations which shall have been registered with the secretary of state for at least 2 years and in existence for at least 2 years in a town or city in this state, provided that the primary activities conducted by the organization were for the purpose for which the organization was established and have not included charitable gambling operations; which is organized under the laws of this state; and to which contributions are exempt from federal income tax. ***Chambers of commerce or other similar organizations, which are tax exempt under the Internal Revenue Code, and whose mission is to promote the improvement of the business environment, economic vitality, and overall stability and quality of life of the geographic area in which they serve, shall also be eligible for licensure under this chapter.*** To be eligible for licensure under this chapter, a charitable organization shall do all of the following:

(1) Document that it is exempt from federal income tax.

(2) Establish that the purposes for which it was organized, other than charitable gambling, are furthered through activities conducted in [the town or city in which the games of chance are conducted] ***the geographic area in which they serve by the use of funds generated by games of chance.***

(3) Register with the secretary of state and, if required under RSA 7:19-32, with the director of charitable trusts.

(4) Maintain a current list of bona fide members.

SENATOR D'ALLESANDRO: Thank you, Madam President. It's quite appropriate that I bring this bill out. (Laughter) Particularly after our last discussion now. I want to give more money away. Thank you, Madam President. I move Senate Bill 493 ought to pass with amendment. This bill reinstates 501(c)(6) organizations eligible to be licensed to conduct games of chance. The chambers of commerce were originally allowed to conduct these games, but a few years ago, they were stricken from the law. The chambers use the money earned from these events to give back to the community, such as scholarships for graduates, community events, providing educational forums, as well as providing contributions to local organizations. The amendment clarifies the law that only charitable organizations may participate in games of chance. Please join the Ways and Means Committee in voting this bill ought to pass with amendment. Thank you, Madam President.

**The question is on the adoption of Committee Amendment 0961s.
Committee Amendment 0961s adopted.**

(The Chair recognized Sen. Clegg for a question of Sen. D'Allesandro.)

SENATOR CLEGG: Senator, allowing the chambers of commerce – the chambers of commerce, don't they include members like owners of restaurants and those kinds of establishments, aren't they members of chambers?

SENATOR D'ALLESANDRO: Yes.

SENATOR CLEGG: Follow-up. So does this mean that we'll allow all of those people to participate in gambling?

SENATOR D'ALLESANDRO: That's what it means.

SENATOR CLEGG: Thank you, Senator.

(The Chair recognized Sen. Gatsas for a question of Sen. D'Allesandro.)

SENATOR GATSAS: Senator, is this –

SENATOR D'ALLESANDRO: Sounds like I'm getting married again. "I do."

SENATOR GATSAS: Senator, easy. (Laughter)

SENATOR D'ALLESANDRO: You're right. I don't want to go that far. (Laughter)

SENATOR GATSAS: I know on the last vote you needed me, but we're not going that far.

SENATOR D'ALLESANDRO: A vote's a vote.

SENATOR GATSAS: See all the love? Is this an expansion of gaming?

SENATOR D'ALLESANDRO: Is this an expan... – it's already present, but I'd say yes.

SENATOR GATSAS: Thank you, Senator.

(The Chair recognized Sen. Letourneau for a question of Sen. D'Allesandro.)

SENATOR LETOURNEAU: Just tell me where this money goes. These people are gonna – these people that – we defined charitable organizations. Is this money going to go to charity?

SENATOR D'ALLESANDRO: That's what it says.

SENATOR LETOURNEAU: It goes to charity.

SENATOR D'ALLESANDRO: It says that the chamber uses the money for scholarships for graduates, community events, educational forums, as well as providing contributions to local organizations.

SENATOR LETOURNEAU: Thank you.

The question is on the adoption of Ought to Pass as Amended on SB 493.

A roll call was requested by Sen. Roberge, seconded by Sen. Barnes.

The following Senators voted Yes: Gallus, Reynolds, Kenney, Sgambati, Burling, Cilley, Janeway, Odell, Kelly, Gottesman, Foster, Clegg, Larsen, Gatsas, DeVries, D'Allesandro, Estabrook, Downing, Hassan.

The following Senators voted No: Roberge, Bragdon, Barnes, Letourneau, Fuller Clark.

Yeas: 19 - Nays: 5

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

MOTION TO REMOVE FROM THE TABLE

Sen. Foster moved to have SB 334-FN removed from the table.

Motion adopted.

SB 334-FN, relative to undue influence on real estate appraisals and relative to the quorum of the real estate appraiser's board. Executive Departments and Administration Committee. Ought to Pass with Amendment, Vote 2-0. Senator Downing for the committee.

The question is on the adoption of the Committee Amendment 0466s.

Senate Executive Departments and Administration

February 8, 2008

2008-0466s

10/05

Amendment to SB 334-FN

Amend the bill by replacing section 4 with the following:
4 Effective Date. This act shall take effect upon its passage.

SENATOR FOSTER: I believe the bill had been tabled over some concerns in language of the original bill, on lines 13-15, and I frankly think I misread it and I'm comfortable with the language there, it dealt with the crime, a misdemeanor and whether somebody whose license is under another statute would also have the same penalty assessed. And it looks the way that it's written, I'm now comfortable with the language. I think that's why we had put it on the table. I believe it's Sen. Gallus' bill, I don't know if he wants to speak to it.

The question is on the adoption of Committee Amendment 0466s.

Committee Amendment 0466s adopted.

(The Chair recognized Sen. Gallus to speak.)

SENATOR GALLUS: While you're reviewing it, I could probably just speak for just a second, Madam President. One of things with the bill, the appraisal board, this would change the number of people needed for a quorum. And they had – they're having trouble raising a quorum of

people, and last month, again, they could not have a meeting because a quorum didn't show up at the meeting. So this also changes a quorum. And we thank you for your support.

(The Chair recognized Sen. Barnes for a question of Sen. Gallus.)

SENATOR BARNES: Sen. Gallus, who appoints those committee members?

SENATOR GALLUS: I think they're appointed by Governor and Council.

SENATOR BARNES: Yeah. Thank you. If people aren't showing up, does somebody on that appraisers' board go to the Governor and say you got some people that aren't showing up, so you can get rid of those people who aren't interested and don't make it?

SENATOR GALLUS: I'm sure that's being done.

SENATOR BARNES: It is being done.

SENATOR GALLUS: I'm not positive of that, but ...

SENATOR BARNES: Thank you, Senator.

Sen. Burling offered a floor amendment.

Sen. Burling, Dist. 5

February 13, 2008

2008-0591s

10/05

Floor Amendment to SB 334-FN

Amend the bill by inserting after section 1 the following and renumbering the original sections 2 -4 to read as 3 - 5, respectively:

2 Real Estate Appraisers; Prohibited Conduct. Amend RSA 310-B:5-a to read as follows:

310-B:5-a Prohibited Conduct.

I. A person licensed or certified by the board under this chapter, shall, after a hearing, be subject to disciplinary action as provided in RSA 310-B:18 for being convicted in a court of competent jurisdiction of this or any other state, or federal court, of forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud, sexual crimes, drug distribution, arson, physical violence, or any similar offense or offenses; provided that, for the purposes of this section being convicted shall include all instances in which a plea of guilty or nolo contendere is the basis for the conviction, and all proceedings in which the sentence has been deferred or suspended.

II. A person licensed or certified by the board under this chapter who adjusts an appraisal in violation of RSA 479:31 shall be guilty of a misdemeanor and shall be subject to disciplinary proceedings under RSA 310-B:18.

SENATOR BURLING: Thank you, Madam President. Madam President, I'm sorry, but it's been long enough so that I have forgotten about the existence of this amendment. I'd like to offer 0591s. And while it's being handed out, maybe I could speak to it?

PRESIDENT LARSEN: You can do that. Floor Amendment 0591s has been proposed. Please speak to that amendment.

SENATOR BURLING: It came to the attention of the Committee, after the original bill was filed, that what we had done under the original bill is penalize a person who solicited the maladjustment of an appraisal, but we did nothing to the person who actually "cooked the books." This

amendment would, in fact, apply the identical penalty to the person who, quote, "adjusts an appraisal" in violation of 479:31, to the same extent. That was a concept we had, in fact, discussed in committee. And I think we had unanimous interest in doing that.

The question is on the adoption of Floor Amendment 0591s.

Floor Amendment 0591s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 334-FN.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 518-FN, relative to agricultural restricted covenants. Wildlife, Fish and Game and Agriculture Committee. Ought to Pass with Amendment, Vote 3-0. Senator Janeway for the committee.

Wildlife, Fish and Game and Agriculture

March 6, 2008

2008-0882s

08/09

Amendment to SB 518-FN

Amend the bill by replacing all after the enacting clause with the following:

1 Agricultural Preservation Restrictions. Amend RSA 432:18, II to read as follows:

II. "Agricultural preservation restriction" means the restraint placed on the development rights of agricultural land, whether stated in the form of a restriction, easement, covenant, or condition, in any deed, will, or other instrument executed by or on behalf of the owner of the land which is appropriate to retaining land or water areas predominantly in their agricultural use, to prohibit or limit (1) construction or placement of buildings except those used for agricultural purposes ~~or for dwellings used for family living by the landowner, his immediate family or employees~~; (2) excavation, dredging, or removal of loam, sod, peat, gravel, soil, rock, or other mineral substance in such a manner as to adversely affect the land's future agricultural potential; or (3) other acts or uses detrimental to such retention of the land for agricultural use.

2 New Paragraph; Agricultural Restricted Covenants; Definition. Amend RSA 432:18 by inserting after paragraph II the following new paragraph:

II-a. "Agricultural restricted covenant" means a covenant entered into between a landowner and the department for a limited time set by the parties with financial or technical assistance provided by the department in return for guarantees of continued farm use of the property for a minimum specified time period.

3 Site; Agricultural Restricted Covenant Added. Amend RSA 432:18, IX to read as follows:

IX. "Site" means a specific land area for agricultural purposes in which agricultural land development rights **including agricultural restricted covenants** are acquired in order to preserve land suitable for agricultural production.

4 New Paragraph; Duties of the Commissioner. Amend RSA 432:21 by inserting after paragraph V the following new paragraph VI:

VI. Adopt rules relative to procedures for granting financial or technical assistance for aid for the creation of agricultural restricted covenants.

5 Administration; Agricultural Restricted Covenants. Amend RSA 432:22, I to read as follows:

I. Acquisition of agricultural land development rights shall be conducted in cooperation with a landowner upon review pursuant to this section. Any proposal for designating a site as an agricultural preservation restriction area **or a site for an agricultural restricted covenant** shall be submitted by the landowner to the committee for approval.

6 Administration; Agricultural Restricted Covenants. Amend RSA 432:22, V to read as follows:

V. The committee shall view each parcel subject to agricultural preservation restriction **or an agricultural restricted covenant** not less than once every 2 years to assure that its use complies with law and the rules of the committee. The committee may delegate responsibility for monitoring of the agricultural preservation restriction **or the agricultural restricted covenant to the department**, to the conservation commission in the municipality, or to the conservation district, in which the parcel is situated. Such commission or district shall submit a report of its inspection to the committee in a timely manner.

7 Release; Agricultural Restricted Covenants. Amend RSA 432:24, I-II to read as follows:

I. Agricultural preservation restrictions shall be in perpetuity except as released pursuant to this section and RSA 432:25. **Agricultural restricted covenants shall run in accordance with the agreement between a landowner and the department except as released pursuant to this section and RSA 432:25.** All customary rights and privileges of ownership shall be retained by the owner including the right to privacy and the right to carry out all regular agricultural practices which are not prohibited by RSA 432:18, II.

II. Agricultural preservation restrictions **and agricultural restricted covenants** may be released by the committee if the site is no longer suitable for agricultural purposes. An owner of an agricultural preservation site may request the committee's approval to release the restriction for the public good. Prior to the release of the agricultural land development rights by the committee, a public hearing shall be conducted in the municipality in which the site is located. A notice of said hearing shall specify the grounds for the hearing as well as the date, time and place, and at least 14 days' notice of the time and place of such hearing shall be published in a paper of general circulation in the municipality. A legal notice of the hearing shall also be posted in at least 3 public places in such city or town. The 14 days shall not include the day of publication nor the day of the meeting, but shall include any Saturdays, Sundays and legal holidays within said period. At least 2 committee members shall sit on the hearing panel.

8 Easement Restriction. For all agricultural easements acquired under RSA 432 after July 1, 2008, the construction or placement of any building is prohibited except those used solely for agricultural purposes.

9 Effective Date. This act shall take effect July 1, 2008.

SENATOR JANEWAY: Thank you, Madam President. As you all have become accustomed, I hope by now, when I come up to talk about Wildlife, Fish and Game, we're just about at the finish line. Wildlife being the first word in the name of this committee, I think perhaps if 303 and whatever – 330 and 306 had been in our committee, the outcome might have been different. Thank you, Madam President. I move Senate Bill 518 ought to pass with amendment. This bill codifies another form of easement known as an "agricultural restricted covenant," which is

aimed at preserving working agricultural lands. Unlike typical easements which are perpetual, these restrictions apply for limited terms, probably five years, possibly more. They are designed to give a farmer time, and some real-estate tax relief, to develop a viable operation working on a plan that's developed with the Department of Agriculture. The Department sees this as a pilot program, and I should emphasize, is not seeking any General Fund commitment. The program is already working well in other states. Farming is, and will continue to be, a vital part of our economy and the landscape in this state. The committee amendment simply allows construction of a building for agricultural purposes only, i.e., no residences within the bounds of the restricted area. So I hope you'll please join the Wildlife, Fish and Game and Agriculture Committee in voting this bill ought to pass with amendment. Thank you very much.

The question is on the adoption of Committee Amendment 0882s. Committee Amendment 0882s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 518-FN.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

MOTION TO REMOVE FROM THE TABLE

Sen. Cilley moved to have SB 525 removed from the table.

Motion adopted.

SB 525, establishing the fourth Sunday in May as Emergency Medical Technician Memorial Day. Executive Departments and Administration Committee. Ought to Pass, Vote 3-0. Senator Cilley for the committee.

The question is on the adoption of committee recommendation of Ought to Pass.

Sen. Cilley offered a floor amendment.

Sen. Cilley, Dist. 6

March 13, 2008

2008-1023s

04/05

Floor Amendment to SB 525

Amend the title of the bill by replacing it with the following:

AN ACT establishing the first Saturday in May as Emergency Medical Services Providers Memorial Day.

Amend the bill by replacing section 1 with the following:

1 New Section; Powers of Governor and Council; Emergency Medical Services Providers Memorial Day. Amend RSA 4 by inserting after section 13-m the following new section:

4:13-n Emergency Medical Services Providers Memorial Day. In recognition of the service given by the men and women who, night and day, serve the people of this state as emergency medical services providers, and inviting the governments, communities, and people of this state to observe such day with appropriate ceremonies and activities, the governor shall proclaim the first Saturday in May of each year as Emergency Medical Services Providers Memorial Day in honor of the emergency medical services providers who have been killed or disabled in the line of duty and those still serving.

2008-1023s**AMENDED ANALYSIS**

This bill establishes the first Saturday in May as Emergency Medical Services Providers Memorial day.

SENATOR CILLEY: Madam President, I have a floor amendment, if I may introduce at this time.

PRESIDENT LARSEN: You may introduce that and speak to it as it's being distributed.

SENATOR CILLEY: Thank you, Madam President. This bill was brought on behalf of constituents in my district, but it affects members of the Emergency Medical Services throughout the state. It may interest this body to know that there is a national memorial service that's been held since 1993 honoring the men and women of America's EMS systems, who have made the ultimate sacrifice and laid down their lives in the line of duty. To date, the National EMS Memorial Service has honored 350 individuals from 44 states and the District of Columbia. In 1998, the United States Congress, through Concurrent Resolutions of the Senate and the House of Representatives, designated National EMS Memorial Service, held annually in Roanoke, Virginia, as the official EMS Memorial of the United States. The National EMS Memorial Service is currently held each year on the last Saturday of the month of May. The Sixteenth Annual National EMS Memorial Service will be conducted in Roanoke, Virginia at 6 p.m., Sunday, May 24, 2008.

Now, the reason that I asked initially to have this put on the table was because my esteemed colleague, Sen. Barnes, had a particular difficulty with the fact that this fell on the same weekend as Memorial Weekend, which we all honor. And I understood that, you know, what his concerns were and that there was a conflict here. In point of fact, when I went back to my constituent and I said, we have this issue. He went to the people that are, you know, that have been taking care of the national situation and found there was a great deal of political push-back at that level, too, and that they were talking about moving it. And so, although they haven't made the, you know, the formal move yet, he has asked that as the "First in the Nation" state, that we select the first Saturday of May for this recognition. And he and members of his group are quite satisfied with that. I will also – and I know Sen. Barnes will make his own comments, I don't want to speak for him, but I will address the issue, because I know he still has one more, and it is the term "memorial service." For sixteen years, this is what this event, and this set of activities has been known as, the "EMS Memorial Day," and the "EMS Memorial Week." And so I would ask you to please consider that this coincides with what they have been doing now for some time now at the national level, which does move the day to the first Saturday of May, and for your consideration for the bill. Thank you.

Recess/Out of Recess.

The question is on the adoption of Floor Amendment 1023s on SB 525.

MOTION TO TABLE

Sen. Cilley moved to have SB 525 laid on the table.

Motion adopted.

LAID ON THE TABLE

SB 525, establishing the fourth Sunday in May as Emergency Medical Technician Memorial Day.

RESOLUTION

Sen. Foster moved that the Senate adjourn from the Early Session, that the business of the Late Session be in order at the present time, that all bills and resolutions ordered to Third Reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

Motion to adjourn adopted.

Adjournment from the Early Session.

LATE SESSION**Third Reading and Final Passage**

SB 334-FN, relative to undue influence on real estate appraisals and relative to the quorum of the real estate appraiser's board.

SB 337-FN, relative to home education of children.

SB 338, relative to the Hampton Beach capital improvement fund.

SB 346-FN, relative to the regulation of fuel gas fitters by the state fire marshal.

SB 359, updating the health curriculum requirements for public school students and requiring the state board of education to provide for procedures through which students may be excused from course requirements relating to health and sex education on religious grounds without penalty.

SB 361, relative to the widening of Interstate 93.

SB 368, relative to exemptions for toxics reduction in packaging.

SB 374, relative to the process for nonrenewal of teacher contracts.

SB 386, relative to service territories served by several telephone utilities.

SB 394, establishing an economic development advisory council.

SB 398, establishing a committee to study municipal boundaries and the laws pertaining to these boundaries.

SB 400, relative to the authority of bail commissioners.

SB 407, establishing a committee to study the right of entry upon lands for the purpose of conducting a land survey.

SB 410, relative to the conditions for issuance of a cremation certificate and relative to the medical examiner's statute.

SB 420, relative to criminal background checks of health care facilities and certain nurse applicants.

SB 425, relative to the data collection practices of health care providers and relative to the development of a comprehensive uninsured health care database.

SB 445, changing the procedure for recommending persons for initial appointment as marital masters.

SB 453, relative to the terms of members of the electricians' board.

SB 460, relative to the definition of surviving issue.

SB 468, relative to the reinsurance pool and the New Hampshire vaccine association.

SB 479, relative to the vote required for passage of school bonds.

SB 483, establishing a committee to study in-home intervention and counseling services for families and children charged with a crime or designated in need of services by the juvenile court.

SB 484, establishing a commission to investigate alternatives to incarceration for nonviolent offenders and cost savings related to such alternatives.

SB 493, allowing certain tax exempt organizations to be defined as charitable organizations for purposes of games of chance operations.

SB 496, establishing a commission to study incentives for providers of home and community-based care.

SB 500-FN, relative to certain insurance fraud, relative to workers' compensation for employee leasing companies, and establishing a task force on employee misclassification.

SB 501, relative to workers' compensation on certain state projects and penalty collection powers of the department of labor.

SB 503-FN, relative to authorizing temporary registrations of off-highway recreational vehicles for nonresidents.

SB 506, naming the Elm Street bridge in Newport after Specialist Justin A. Rollins.

SB 508-FN-L, relative to municipal deposits.

SB 518-FN, relative to agricultural restricted covenants.

SB 524, relative to eligibility for persons to receive the elderly property tax exemption.

SB 529, changing certain references in the mental health laws.

SB 531, relative to the capital appropriation for the Hillsborough north superior court and relative to the venue for criminal cases in Hillsborough county.

SB 532, relative to administrative fines under the indoor smoking act.

SB 533, establishing a committee to study age-based driver's license renewal testing.

SB 534-FN, eliminating the processing fee on court credit card transactions.

SB 536-FN, reclassifying certain positions in the insurance department.

SB 537, relative to allowing the commissioner of the department of employment security to participate in a joint local employment dynamics program with the United States Census Bureau and the Bureau of Labor Statistics.

SB 538, relative to the community college system of New Hampshire board of trustees and repealing a motor vehicle regulation statute applicable to the community college system.

SCR 6, urging the federal government to create a simplified process for short-term admissions to nursing homes for the purpose of respite care.

ANNOUNCEMENTS

SENATOR LETOURNEAU (Rule 44): Thank you, Madam President. And, briefly, to my colleagues that served with us in the House, Mert Dyer passed away yesterday afternoon. He was a long-time House member, he worked on the Retirement System for years, and those that have worked on the Retirement System knew Mert's passion for that, and he passed away yesterday. So our hearts and prayers and thoughts go out to his family. Thank you.

President Larsen moved, without objection, all Rule 44's are to be entered into the permanent record.

RESOLUTION

Sen. Foster moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, referring bills to committee, scheduling hearings, sending and receiving messages, and processing enrolled bills, reports and amendments.

Motion to recess adopted.

The Senate is in recess to the Call of the Chair.

HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

HB 1151, relative to reporting dates for the instream flow pilot program.

INTRODUCTION OF HOUSE BILL(S)

Sen. Foster offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Senate Clerk, House legislation numbered from **HB 1151**, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

Resolution adopted.

First and Second Reading and Referral

HB 1151, relative to reporting dates for the instream flow pilot program. (Energy, Environment and Economic Development)

HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

HB 847, relative to general rules for vessels operating on water.

HB 1136, relative to automated external defibrillators.

HB 1165, relative to department of transportation traffic control regulations.

HB 1191, relative to environmental investigations in tax lien and tax sale proceedings.

HB 1192, relative to the solemnization of marriage.

HB 1201, allowing communities to conduct point of dispensing exercises to test emergency management operations plans, allowing qualified health professionals to prescribe and administer flu vaccine during such exercises, and granting immunity to such qualified health professionals.

HB 1207, relative to standards for highway and bridge construction.

HB 1226, allowing the town of Bristol to establish a capital reserve fund for use of the water works and sewer department.

HB 1228, relative to sales of motor fuel by the department of transportation to certain nonprofit corporations.

HB 1230, requiring pharmacists to charge an insured person the usual and customary price or the copayment, whichever is less, of filling a prescription.

HB 1240, relative to disqualification of certain election officers and relative to arrangement of polling places.

HB 1243, amending the timeframes for involuntary civil commitment of sexually violent predators.

HB 1244, relative to auditable basis policies.

HB 1245, relative to insurance department records, investigations, and enforcement.

HB 1246, relative to insurance policy denial provisions.

HB 1254, relative to the ability of towns to regulate the storage of deicing chemicals.

HB 1257, relative to license suspensions for persons operating under the influence of drugs.

HB 1258, relative to vehicle impoundment following an arrest for DWI or refusing consent to a blood alcohol test.

HB 1259, authorizing communities to establish municipal housing commissions and affordable housing revolving funds.

HB 1262, relative to continuing medical education requirements for persons licensed by the board of medicine.

HB 1264, relative to prohibiting ATV and trail bike use on state-owned rail trails acquired using federal funds.

HB 1274, relative to certain securities professional designations and securities administration.

HB 1278, relative to the purchase of computer services and supplies for state agencies.

HB 1279, relative to the scope of certain insurance laws.

HB 1281, prohibiting public schools from requiring health insurance as a condition of enrollment except if health insurance is a requirement of the student's program of study.

HB 1282, amending the pre-engineering technology curriculum.

HB 1295, establishing a commission to study issues relating to stormwater.

HB 1299, establishing a committee to study the feasibility of creating a preschool incentive fund program.

HB 1304, authorizing Plymouth state university to award doctoral degrees.

HB 1307, making technical corrections to town audit and reporting requirements.

HB 1313, relative to voting by the chairman of the retirement system board of trustees.

HB 1319, relative to the reasonable cost of medical support for dependent children.

HB 1321, relative to the inspection of juvenile detention facilities.

HB 1332-L, defining "hauler" of solid waste and requiring haulers to register with the department of environmental service, and relative to the weight and measurement of solid waste.

HB 1335, establishing a commission to study the effects of post-traumatic stress disorder and traumatic brain injury suffered by New Hampshire soldiers and veterans returning from Iraq and Afghanistan.

HB 1341-FN-A, making an appropriation to the department of administrative services for an energy audit and system evaluation of the state house.

HB 1343, prohibiting the placing on file or masking of convictions incurred by holders of commercial driver licenses or persons required to hold such licenses.

HB 1352, relative to the comprehensive state development plan.

HB 1353, extending the commission to study issues relative to groundwater withdrawal.

HB 1367, relative to the conversion to a new state financial accounting and statewide budget system.

HB 1370, establishing a pilot program for an integrated juvenile justice information sharing system.

HB 1371, extending certain studies.

HB 1374, establishing a division of homeland security and emergency management in the department of safety.

HB 1377, relative to New Hampshire's rest areas and welcome centers.

HB 1382, adopting the uniform prudent management of institutional funds act.

HB 1384, relative to the regulation of designated agents by the New Hampshire real estate commission, and relative to the disclosure of certain property conditions.

HB 1386, relative to a grandparent's rights to access court and case records involving a grandchild.

HB 1388, establishing a commission to study practices relative to medications prescribed to children in out-of-home placements.

HB 1394-FN, relative to procedures for approvals of nursing education programs.

HB 1402-FN, relative to community health centers.

HB 1404-FN, relative to liability insurance for passenger rail service.

HB 1405-FN, regulating outdoor wood-fired hydronic heaters.

HB 1412, establishing a commission to study appointing or contracting with a fleet manager for state-owned motor vehicles.

HB 1414-FN, increasing the fee for bail commissioners.

HB 1422, establishing a committee to study the prevention of childhood obesity.

HB 1424, relative to notice of meetings of county conventions.

HB 1446, relative to changes to the school building aid statutes and to the schoolhouses statutes.

HB 1451, relative to the transportation of deer by certain persons not issued a deer tag.

HB 1453, relative to civil liability for damage to protective barriers.

HB 1457, allowing smoking in cigar bars.

HB 1470, relative to vehicular pursuits by police officers.

HB 1484, establishing a commission to study retail health clinics.

HB 1493, relative to the commission to study the state highway trust fund.

HB 1561, establishing an energy conservation and efficiency board.

HB 1568-FN, relative to endangering the public water supply.

HB 1579-FN, establishing a commission to study issues relating to land development and land development regulation in New Hampshire.

HB 1584-FN-A, creating a commission to study the recycling and disposal of electronic waste.

HCR 11, urging municipalities to establish an annual free tire collection day.

HCR 17, encouraging the use of reusable shopping bags.

INTRODUCTION OF HOUSE BILL(S)

Sen. Foster offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Senate Clerk, House legislation numbered from **HB 847 to HCR 17**, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

Resolution adopted.

First and Second Reading and Referral

HB 847, relative to general rules for vessels operating on water. (Transportation and Interstate Cooperation)

HB 1136, relative to automated external defibrillators. (Health and Human Services)

HB 1165, relative to department of transportation traffic control regulations. (Transportation and Interstate Cooperation)

HB 1191, relative to environmental investigations in tax lien and tax sale proceedings. (Public and Municipal Affairs)

HB 1192, relative to the solemnization of marriage. (Judiciary)

HB 1201, allowing communities to conduct point of dispensing exercises to test emergency management operations plans, allowing qualified health professionals to prescribe and administer flu vaccine during such exercises, and granting immunity to such qualified health professionals. (Health and Human Services)

HB 1207, relative to standards for highway and bridge construction. (Transportation and Interstate Cooperation)

HB 1226, allowing the town of Bristol to establish a capital reserve fund for use of the water works and sewer department. (Public and Municipal Affairs)

HB 1228, relative to sales of motor fuel by the department of transportation to certain nonprofit corporations. (Transportation and Interstate Cooperation)

HB 1230, requiring pharmacists to charge an insured person the usual and customary price or the copayment, whichever is less, of filling a prescription. (Commerce, Labor and Consumer Protection)

HB 1240, relative to disqualification of certain election officers and relative to arrangement of polling places. (Election Law and Internal Affairs)

HB 1243, amending the timeframes for involuntary civil commitment of sexually violent predators. (Judiciary)

HB 1244, relative to auditable basis policies. (Commerce, Labor and Consumer Protection)

HB 1245, relative to insurance department records, investigations, and enforcement. (Commerce, Labor and Consumer Protection)

HB 1246, relative to insurance policy denial provisions. (Commerce, Labor and Consumer Protection)

HB 1254, relative to the ability of towns to regulate the storage of deicing chemicals. (Public and Municipal Affairs)

HB 1257, relative to license suspensions for persons operating under the influence of drugs. (Judiciary)

HB 1258, relative to vehicle impoundment following an arrest for DWI or refusing consent to a blood alcohol test. (Judiciary)

HB 1259, authorizing communities to establish municipal housing commissions and affordable housing revolving funds. (Public and Municipal Affairs)

HB 1262, relative to continuing medical education requirements for persons licensed by the board of medicine. (Executive Departments and Administration)

HB 1264, relative to prohibiting ATV and trail bike use on state-owned rail trails acquired using federal funds. (Transportation and Interstate Cooperation)

HB 1274, relative to certain securities professional designations and securities administration. (Commerce, Labor and Consumer Protection)

HB 1278, relative to the purchase of computer services and supplies for state agencies. (Executive Departments and Administration)

HB 1279, relative to the scope of certain insurance laws. (Commerce, Labor and Consumer Protection)

HB 1281, prohibiting public schools from requiring health insurance as a condition of enrollment except if health insurance is a requirement of the student's program of study. (Health and Human Services)

HB 1282, amending the pre-engineering technology curriculum. (Education)

HB 1295, establishing a commission to study issues relating to stormwater. (Energy, Environment and Economic Development)

HB 1299, establishing a committee to study the feasibility of creating a preschool incentive fund program. (Education)

HB 1304, authorizing Plymouth state university to award doctoral degrees. (Education)

HB 1307, making technical corrections to town audit and reporting requirements. (Public and Municipal Affairs)

HB 1313, relative to voting by the chairman of the retirement system board of trustees. (Executive Departments and Administration)

HB 1319, relative to the reasonable cost of medical support for dependent children. (Judiciary)

HB 1321, relative to the inspection of juvenile detention facilities. (Judiciary)

HB 1332-L, defining "hauler" of solid waste and requiring haulers to register with the department of environmental service, and relative to the weight and measurement of solid waste. (Energy, Environment and Economic Development)

HB 1335, establishing a commission to study the effects of post-traumatic stress disorder and traumatic brain injury suffered by New Hampshire soldiers and veterans returning from Iraq and Afghanistan. (Election Law and Internal Affairs)

HB 1341-FN-A, making an appropriation to the department of administrative services for an energy audit and system evaluation of the state house. (Finance)

HB 1343, prohibiting the placing on file or masking of convictions incurred by holders of commercial driver licenses or persons required to hold such licenses. (Transportation and Interstate Cooperation)

HB 1352, relative to the comprehensive state development plan. (Capital Budget)

HB 1353, extending the commission to study issues relative to groundwater withdrawal. (Energy, Environment and Economic Development)

HB 1367, relative to the conversion to a new state financial accounting and statewide budget system. (Finance)

HB 1370, establishing a pilot program for an integrated juvenile justice information sharing system. (Judiciary)

HB 1371, extending certain studies. (Election Law and Internal Affairs)

HB 1374, establishing a division of homeland security and emergency management in the department of safety. (Executive Departments and Administration)

HB 1377, relative to New Hampshire's rest areas and welcome centers. (Transportation and Interstate Cooperation)

HB 1382, adopting the uniform prudent management of institutional funds act. (Commerce, Labor and Consumer Protection)

HB 1384, relative to the regulation of designated agents by the New Hampshire real estate commission, and relative to the disclosure of certain property conditions. (Commerce, Labor and Consumer Protection)

HB 1386, relative to a grandparent's rights to access court and case records involving a grandchild. (Judiciary)

HB 1388, establishing a commission to study practices relative to medications prescribed to children in out-of-home placements. (Health and Human Services)

HB 1394-FN, relative to procedures for approvals of nursing education programs. (Executive Departments and Administration)

HB 1402-FN, relative to community health centers. (Executive Departments and Administration)

HB 1404-FN, relative to liability insurance for passenger rail service. (Transportation and Interstate Cooperation)

HB 1405-FN, regulating outdoor wood-fired hydronic heaters. (Energy, Environment and Economic Development)

HB 1412, establishing a commission to study appointing or contracting with a fleet manager for state-owned motor vehicles. (Finance)

HB 1414-FN, increasing the fee for bail commissioners. (Judiciary)

HB 1422, establishing a committee to study the prevention of childhood obesity. (Health and Human Services)

HB 1424, relative to notice of meetings of county conventions. (Public and Municipal Affairs)

HB 1446, relative to changes to the school building aid statutes and to the schoolhouses statutes. (Education)

HB 1451, relative to the transportation of deer by certain persons not issued a deer tag. (Wildlife, Fish and Game and Agriculture)

HB 1453, relative to civil liability for damage to protective barriers. (Judiciary)

HB 1457, allowing smoking in cigar bars. (Commerce, Labor and Consumer Protection)

HB 1470, relative to vehicular pursuits by police officers. (Judiciary)

HB 1484, establishing a commission to study retail health clinics. (Health and Human Services)

HB 1493, relative to the commission to study the state highway trust fund. (Transportation and Interstate Cooperation)

HB 1561, establishing an energy conservation and efficiency board. (Energy, Environment and Economic Development)

HB 1568-FN, relative to endangering the public water supply. (Judiciary)

HB 1579-FN, establishing a commission to study issues relating to land development and land development regulation in New Hampshire. (Energy, Environment and Economic Development)

HB 1584-FN-A, creating a commission to study the recycling and disposal of electronic waste. (Energy, Environment and Economic Development)

HCR 11, urging municipalities to establish an annual free tire collection day. (Public and Municipal Affairs)

HCR 17, encouraging the use of reusable shopping bags. (Energy, Environment and Economic Development)

HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

HB 173-FN-A, relative to the promotion, acquisition, and retention of a large animal veterinarian in those areas of the state where there is a need, and making an appropriation therefor.

HB 352-L, relative to trust funds for public school educational enhancement.

HB 1129, relative to special number plates for municipal police department vehicles.

HB 1130, relative to repealed DWI laws.

HB 1133, relative to the age of majority for purposes of pornography-related offenses.

HB 1141, establishing a committee to study parking for wheelchair-lift vans.

HB 1143, relative to shelter for dogs and the authority of law enforcement officers to take abused and neglected dogs into custody.

HB 1145, designating the Senator Otto Oleson Scenic Overlook in Jefferson.

HB 1152-FN, relative to interpreting statutory deadlines.

HB 1153, relative to physician assistants and physicians regulation by the board of medicine.

HB 1155-FN-A, making an appropriation of certain revenues to the board of nursing.

HB 1157, relative to requirements for approval of village plan alternative subdivisions.

HB 1161, establishing a committee to study the truancy laws.

HB 1167, relative to substituting generically equivalent drug products.

HB 1174, relative to condominium association meetings.

HB 1179, including certain nonprofit organizations under the right-to-know law.

HB 1180, relative to the definitions of "law enforcement officer" and "judicial officer" under the capital murder law and establishing a commission to study the death penalty in New Hampshire.

HB 1181, naming the Manchester district courthouse the Armand Capistran district courthouse.

HB 1196, relative to the procedure for amending municipal charters.

HB 1203, relative to bicycles.

HB 1204, relative to the number of write-in votes required to receive a party's nomination.

HB 1227, clarifying when persons elected may assume certain offices.

HB 1232, relative to the regulation by the fish and game department of baiting of game birds.

HB 1234, establishing an affirmative defense to prosecution for a possession offense if a person has a lawful prescription for a controlled drug.

HB 1235, relative to motorist duties when approaching highway emergencies.

HB 1236, relative to motor vehicle laws.

HB 1239, relative to the legislative youth advisory council.

HB 1247, relative to revolving accounts for public, educational, and governmental access to cable.

HB 1260-L, relative to growth management ordinances.

HB 1261, establishing a commission to investigate a program in which senior year of high school may be spent at a community college.

HB 1276, establishing a committee to study revisions to the auctioneers' practice act.

HB 1294, establishing the offense of public urination or defecation.

HB 1309-FN-A, relative to the definition of "cigarette."

HB 1410, relative to youth training and employment in firefighting.

HB 1442-FN-A-L, relative to the taxation of farm buildings and land under farm buildings.

HB 1456, naming route 202 in Strafford county the Charles E. Smith Memorial Highway.

HB 1468, relative to mosquito control policy for lands managed by the fish and game department.

HB 1471, relative to time limits for excavating and dredging permits.

HB 1585-FN, relative to regulation of fuel gas fitters by the state fire marshal.

HB 1590-FN, establishing a DWI victim fatality sign program.

HB 1603-FN-A, establishing a penalty for payment of a state obligation with an invalid form of payment.

HB 1607-FN, relative to firefighter services leave for state employees.

HB 1638, establishing an oversight commission on motor vehicle fines.

INTRODUCTION OF HOUSE BILL(S)

Sen. Foster offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Senate Clerk, House legislation numbered from **HB 173 to HB 1638**, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

Resolution adopted.

First and Second Reading and Referral

HB 173-FN-A, relative to the promotion, acquisition, and retention of a large animal veterinarian in those areas of the state where there is a need, and making an appropriation therefor. (Wildlife, Fish and Game and Agriculture)

HB 352-L, relative to trust funds for public school educational enhancement. (Education)

HB 1129, relative to special number plates for municipal police department vehicles. (Transportation and Interstate Cooperation)

HB 1130, relative to repealed DWI laws. (Judiciary)

HB 1133, relative to the age of majority for purposes of pornography-related offenses. (Judiciary)

HB 1141, establishing a committee to study parking for wheelchair-lift vans. (Transportation and Interstate Cooperation)

HB 1143, relative to shelter for dogs and the authority of law enforcement officers to take abused and neglected dogs into custody. (Public and Municipal Affairs)

HB 1145, designating the Senator Otto Oleson Scenic Overlook in Jefferson. (Public and Municipal Affairs)

HB 1152-FN, relative to interpreting statutory deadlines. (Commerce, Labor and Consumer Protection)

HB 1153, relative to physician assistants and physicians regulation by the board of medicine. (Executive Departments and Administration)

HB 1155-FN-A, making an appropriation of certain revenues to the board of nursing. (Finance)

HB 1157, relative to requirements for approval of village plan alternative subdivisions. (Public and Municipal Affairs)

HB 1161, establishing a committee to study the truancy laws. (Education)

HB 1167, relative to substituting generically equivalent drug products. (Health and Human Services)

HB 1174, relative to condominium association meetings. (Commerce, Labor and Consumer Protection)

HB 1179, including certain nonprofit organizations under the right-to-know law. (Public and Municipal Affairs)

HB 1180, relative to the definitions of "law enforcement officer" and "judicial officer" under the capital murder law and establishing a commission to study the death penalty in New Hampshire. (Judiciary)

HB 1181, naming the Manchester district courthouse the Armand Capistran district courthouse. (Public and Municipal Affairs)

HB 1196, relative to the procedure for amending municipal charters. (Public and Municipal Affairs)

HB 1203, relative to bicycles. (Transportation and Interstate Cooperation)

HB 1204, relative to the number of write-in votes required to receive a party's nomination. (Election Law and Internal Affairs)

HB 1227, clarifying when persons elected may assume certain offices. (Election Law and Internal Affairs)

HB 1232, relative to the regulation by the fish and game department of baiting of game birds. (Wildlife, Fish and Game and Agriculture)

HB 1234, establishing an affirmative defense to prosecution for a possession offense if a person has a lawful prescription for a controlled drug. (Judiciary)

HB 1235, relative to motorist duties when approaching highway emergencies. (Transportation and Interstate Cooperation)

HB 1236, relative to motor vehicle laws. (Transportation and Interstate Cooperation)

HB 1239, relative to the legislative youth advisory council. (Election Law and Internal Affairs)

HB 1247, relative to revolving accounts for public, educational, and governmental access to cable. (Public and Municipal Affairs)

HB 1260-L, relative to growth management ordinances. (Public and Municipal Affairs)

HB 1261, establishing a commission to investigate a program in which senior year of high school may be spent at a community college. (Education)

HB 1276, establishing a committee to study revisions to the auctioneers' practice act. (Executive Departments and Administration)

HB 1294, establishing the offense of public urination or defecation. (Judiciary)

HB 1309-FN-A, relative to the definition of "cigarette." (Ways and Means)

HB 1410, relative to youth training and employment in firefighting. (Commerce, Labor and Consumer Protection)

HB 1442-FN-A-L, relative to the taxation of farm buildings and land under farm buildings. (Public and Municipal Affairs)

HB 1456, naming route 202 in Strafford county the Charles E. Smith Memorial Highway. (Transportation and Interstate Cooperation)

HB 1468, relative to mosquito control policy for lands managed by the fish and game department. (Public and Municipal Affairs)

HB 1471, relative to time limits for excavating and dredging permits. (Energy, Environment and Economic Development)

HB 1585-FN, relative to regulation of fuel gas fitters by the state fire marshal. (Executive Departments and Administration)

HB 1590-FN, establishing a DWI victim fatality sign program. (Transportation and Interstate Cooperation)

HB 1603-FN-A, establishing a penalty for payment of a state obligation with an invalid form of payment. (Ways and Means)

HB 1607-FN, relative to firefighter services leave for state employees. (Executive Departments and Administration)

HB 1638, establishing an oversight commission on motor vehicle fines. (Transportation and Interstate Cooperation)

Out of Recess.

LATE SESSION

Sen. Foster moved that the Senate adjourn from the Late Session.

Motion to adjourn adopted.

Adjournment from the Late Session.

March 20, 2008

The Senate reconvened at 10:30 a.m., a quorum being present.

The Reverend Canon Timothy Rich, chaplain to the Senate, offered the following remarks and prayer:

"Mandatum novum do vobis ut diligatis invicem sicut dilexi vos." It's this Latin statement which gives rise to this Christian day which we call Maundy Thursday. It's this Latin statement which explains Jesus' seemingly inexplicable act of getting on his hands and knees to wash the feet of his 12 closest followers. *"Mandatum novum do vobis ut diligatis invicem sicut dilexi vos."* It means: "A new commandment I give to you, that you love one another as I have loved you." Now, regardless of

whether or not you believe in the divinity of Jesus, any reasonable person following this story would almost assuredly respond, "Are you kidding me?" Here Jesus was, this great and powerful leader, humbling himself by washing the feet of his 12 apostles: a pretty grimy task when you consider the dirt roads and the open-toed sandals of the day. And let's not forget that he washed the feet of all of those in the room, including Judas, the one whom he knew would soon betray him, and Peter, the one whom he knew would soon deny him. He looked upon them knowing their faults, knowing their weaknesses; recalling the disappointments that had come before and aware of the ultimate disappointment which was about to follow, and he cared for them, and he loved them, and then he commanded them to do the same. Now, if he could love the imperfect souls in that room, I wonder how much better we could love those gathered in this room today?

Let us pray:

O God of unfathomable love: Move us all – Jewish, Muslim or Christian; Republican, Democrat or Independent – to pour the healing waters of grace upon one another, washing away our bitterness, judgment, anger and resentment. And then help us, we pray, to consider the example and commandment of Jesus that we might discover a way to bend the knee of our hearts and love one another as You have loved us. In the name of Love, we pray. Amen

Sen. Kelly led the Pledge of Allegiance.

INTRODUCTION OF GUESTS AND PRESENTATIONS

Meg Hassan, Sen. Hassan's daughter.

The Inventioners, New Hampshire's State Champion First LEGO League team, reigning World Champions in Nanotechnology Research, 9-14 year-old students from Southern New Hampshire.

Candia Lancers Basketball Team, Coaches, Athletic Director and Principal, Henry Moore School, Tri-County Class S Champions.

Senate Page: Austin Shackelford, Pinkerton Academy.

Senate Page: Zachary Pepper, Pinkerton Academy.

Recess/Out of Recess.

COMMITTEE REPORTS

SB 391, relative to affordable health insurance for small employers. Commerce, Labor and Consumer Protection Committee. Inexpedient to Legislate, Vote 5-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Madam President. I move Senate Bill 391 inexpedient to legislate. This bill requires the Commissioner of the Insurance Department to establish a standard wellness plan for small employers. The Committee voted unanimously to inexpedient-legislate this bill at the request of its prime sponsor who asked that the Committee instead support Senate Bill 540. Senate Bill 540 represents a more thorough effort to address this very important issue. The Commerce, Labor and Consumer Protection Committee asks for your support in voting Senate Bill 391 inexpedient to legislate, and the Committee thanks you ahead of time.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on SB 391.

Motion of Inexpedient to Legislate adopted.

SB 465, relative to the laws regulating trusts and trust companies in New Hampshire. Commerce, Labor and Consumer Protection Committee. Ought to Pass with Amendment, Vote 5-0. Senator Cilley for the committee.

Sen. D'Allesandro, Dist. 20

March 6, 2008

2008-0892s

08/09

Amendment to SB 465

Amend the bill by replacing all after the enacting clause with the following:

1 Purpose. The general court finds:

I. The market for trusts and fiduciary services across the nation is a rapidly growing sector of the nation's economy.

II. New Hampshire is uniquely positioned to provide the most attractive legal and financial environment for individuals and families seeking to establish and locate their trusts and investment assets.

III. This act will serve to continue New Hampshire's firm commitment to be the best and most attractive legal environment in the nation for trusts and fiduciary services, an environment that will continue to attract to our state good-paying jobs for trust and investment management, legal and accounting professionals, and other professionals to provide the support and infrastructure required to service this growing sector of the nation's economy.

2 Uniform Trust Code; Definitions. Amend RSA 564-B:1-103(22) to read as follows:

(22) "Ascertainable standard" means a standard related to an individual's health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code [of 1986, as in effect on the effective date of this chapter, or as later amended].

3 Uniform Trust Code; Definitions. RSA 564-B:1-103(24) is repealed and reenacted to read as follows:

(24) "Excluded fiduciary" means any trustee, trust advisor, or trust protector to the extent that, under the terms of the trust, an agreement of the qualified beneficiaries, or court order, (i) the trustee, trust advisor, or trust protector is excluded from exercising a power, or is relieved of a duty, and (ii) the power or duty is granted or reserved to another person.

4 Uniform Trust Code; Definitions. RSA 564-B:1-103(27)-(28) is repealed and reenacted to read as follows:

(27) "Trust advisor" means any person described in RSA 564-B:12-1201(a).

(28) "Trust protector" means any person described in RSA 564-B:12-1201(a).

5 Uniform Trust Code; Definitions. Amend RSA 564-B:1-103 by inserting after paragraph (28) the following new paragraph:

(29) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended and as in effect from time to time.

6 Uniform Trust Code; Nonjudicial Settlement Agreements. Amend RSA 564-B:1-111(a) to read as follows:

(a) For purposes of this section, "interested persons" means persons, *other than the settlor*, whose consent would be required in order to achieve a binding settlement were the settlement to be approved by a court.

7 Uniform Trust Code; Representation by Fiduciaries and Parents. RSA 564-B:3-303(7) is repealed and reenacted to read as follows:

(7) a parent may represent and bind (i) the parent's minor or unborn child if neither a guardian of the estate nor guardian of the person for the child has been appointed and (ii) a minor or unborn descendant of such child if neither a guardian of the estate of the descendant nor a guardian of the person of the descendant has been appointed.

8 Uniform Trust Code; Noncharitable Trust Without an Ascertainable Beneficiary. Amend RSA 564-B:4-409 to read as follows:

564-B:4-409 Noncharitable Trust Without Ascertainable Beneficiary. Except as otherwise provided in RSA 564-B:4-408 or by another statute, the following rules apply:

(1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose ~~[to be selected by the trustee]~~.

(2) A trust authorized by this section may be enforced by *a trustee*, a trust advisor, a trust protector, a person appointed ~~[in]~~ *under* the terms of the trust or, if no person is so appointed, by a person appointed by the court.

(3) ~~[Property of a trust authorized by this section may be applied only to its intended use,]~~ Except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use, *property of a trust authorized by this section may be applied only to its intended use, including appointing trust property to or for the benefit of an existing or new trust whose purposes are limited to one or more purposes of the original trust.* Except as otherwise provided ~~[in]~~ *by* the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

9 New Section; Uniform Trust Code; Trustee's Authority to Decant Trust. Amend RSA 564-B by inserting after section 4-417 the following new section:

564-B:4-418 Trustee's Authority to Decant Trust.

(a) Unless the terms of the trust expressly provide otherwise, a trustee with the discretion to make distributions to or for the benefit of one or more beneficiaries of a trust (the "first trust") may exercise that discretion by appointing the property subject to that authority in favor of another trust for the benefit of one or more of those beneficiaries (the "second trust").

(b) Notwithstanding the provisions of paragraph (a), the trustee may not decant property of the first trust in favor of the second trust under any of the following circumstances:

(1) the second trust includes a beneficiary that is not a beneficiary of the first trust. For purposes of this subparagraph, a permissible appointee of a power of appointment held by a beneficiary of the second trust is not considered to be a beneficiary of the second trust;

(2) the exercise of the power to decant will reduce any current fixed income interest, annuity interest, or unitrust interest of a beneficiary of the first trust;

(3) a contribution to the first trust qualified for a marital or charitable deduction for federal or state income, gift, or estate tax purposes or qualified for a gift tax exclusion for federal or state gift tax purposes, while the terms of the second trust include a provision which, if included in the terms of the first trust, would have prevented the first trust from qualifying for the deduction or exclusion;

(4) the property is subject to a presently exercisable power of withdrawal held by a beneficiary of the first trust; or

(5) under the terms of the second trust:

(A) discretionary distributions may be made to a beneficiary or among a group of beneficiaries of the first trust;

(B) the distributions are not limited by an ascertainable standard; and

(C) the beneficiary or group of beneficiaries has the power to remove and replace the trustee of the first trust with the beneficiary or a member of the group of beneficiaries or with a trustee that is related or subordinate to the beneficiary or a member of the group of beneficiaries (as defined in section 672(c) of the Internal Revenue Code).

(c) Notwithstanding the provisions of paragraph (a), a trustee who is a beneficiary of the first trust may not exercise the authority to appoint property of the first trust in favor of the second trust under any of the following circumstances:

(1) under the terms of the first trust or pursuant to the law governing the administration of the first trust:

(A) such trustee of the first trust does not have the discretion to make or participate in making distributions to himself or herself;

(B) such trustee's discretion to make or participate in making distributions to himself or herself is limited by an ascertainable standard; or

(C) such trustee's discretion to make or participate in making distributions to himself or herself is exercisable only with the consent of a cotrustee or another person holding an adverse interest; while under the terms of the second trust, such trustee's discretion to make or participate in making distributions to himself or herself is not limited by an ascertainable standard and is exercisable without the consent of a cotrustee or another person holding an adverse interest; or

(2) under the terms of the first trust or pursuant to the law governing the administration of the first trust, such trustee of the first trust does not have the discretion to make or participate in making distributions in a manner that will discharge such trustee's legal support obligations, while under the terms of the second trust, such trustee's discretion is not so limited.

(d) The trustee of the first trust shall notify in writing the director of charitable trusts of a proposed appointment in favor of a second trust at least 30 days in advance of the proposed appointment if, at the time the appointment is being proposed:

(1) at least one charitable organization has the rights of a qualified beneficiary of the first trust; or

(2) the director of charitable trusts has the rights of a qualified beneficiary of the first trust.

(e) This section does not abrogate the trustee's duty under RSA 564-B:8-801.

(f) This section does not impose on a trustee a duty to exercise a power to decant in favor of another trust or to consider exercising a power to decant in favor of another trust.

(g) A power to decant is not a power to amend the trust. Accordingly, a trustee is not prohibited from decanting property in favor of another trust solely because the first trust is irrevocable or the terms of the first trust provide that it may not be amended.

(h) A trustee's authority to decant property to another trust under this section is not limited or prohibited by a spendthrift provision in the first trust.

10 New Paragraph; Uniform Trust Code; Discretionary Trusts; Effect of Standard. Amend RSA 564 B:5-504 by inserting after paragraph (e) the following new paragraph:

(f) Except as otherwise provided in paragraph (c), if a trustee has the discretion to make a distribution to a beneficiary and exercises that discretion by directly paying expenses on behalf of the beneficiary, the trustee is not liable to a creditor of the beneficiary:

(1) whether or not the trust contains a spendthrift provision; and

(2) even if directly paying the beneficiary's expenses exhausts the income and principal of the trust.

11 Uniform Trust Code; Creditor's Claim Against Settlor; Additional Exclusion for Certain Irrevocable Trusts. Amend RSA 564-B:5-505(a)(2) to read as follows:

(2) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution. This subparagraph shall not apply to:

(A) an irrevocable "special needs trust" established for a disabled person as described in 42 U.S.C. 1396p(d)(4) or similar federal law governing the transfer to such a trust[-]; or

(B) an irrevocable trust solely because of the existence or exercise of a discretionary power granted to the trustee by the terms of the trust, court order, agreement of the qualified beneficiaries or any other provision of law (or the existence or exercise of a discretionary power granted to a trust advisor or trust protector by the terms of the trust, court order, agreement of the qualified beneficiaries, or any other provision of law, to direct the trustee) to pay directly to the taxing authorities or to reimburse the settlor for any tax on trust income or principal which is payable by the settlor under the law imposing such tax.

12 Uniform Trust Code; Additional Exclusion for Certain Irrevocable Trusts. Amend RSA 564 B:5-505(b)(2) to read as follows:

(2) upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of:

(A) the amount specified in section 2041(b)(2) or 2514(e) of the Internal Revenue Code [~~of 1986~~], or

(B) The amount specified in section 2503(b) of the Internal Revenue Code [~~of 1986, in each case as in effect on the effective date of this chapter, or as later amended~~].

13 New Paragraph; Uniform Trust Code; Creditor's Claim Against Settlor. Amend RSA 564-B:5-505 by inserting after paragraph (b) the following new paragraph:

(c) Nothing in this section shall limit the application of the Qualified Dispositions in Trust Act set forth in RSA 564-D.

14 Uniform Trust Code; Directed Trusts. Amend RSA 564-B:7-711 is repealed and reenacted to read as follows:

564-B:7-711 Directed Trusts. If the terms of the trust, an agreement of the qualified beneficiaries, or a court order requires a trustee, trust advisor, or trust protector to follow the direction of a trust advisor or trust protector and the trustee, trust advisor, or trust protector acts in accordance with such direction, then the trustee, trust advisor, or trust protector shall be treated as an excluded fiduciary.

15 Uniform Trust Code; Trustee Duty to Inform. Amend RSA 564-B:8-813(b) to read as follows:

(b) A trustee shall keep the qualified beneficiaries of an irrevocable trust who have attained 21 years of age and those having the rights of a qualified beneficiary reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. ***A trustee shall be presumed to have fulfilled this duty if the trustee provides the information described in paragraphs (c) and (d).*** Unless unreasonable under the circumstances, a trustee of an irrevocable trust shall promptly respond to the request of any qualified beneficiary or one having the rights of a qualified beneficiary for information related to the administration of the trust. ~~[A trustee shall be presumed to have fulfilled the duty under this subsection if the trustee provides the information described in subsections (c) and (d). The]~~ A trustee may provide any other information the trustee deems necessary or appropriate to keep beneficiaries reasonably informed.

16 Uniform Trust Code; Trustee's Discretionary Power. RSA 564-B:8-814(b)-(d) are repealed and reenacted to read as follows:

(b) Subject to the provisions of paragraph (a), if a distribution to or for the benefit of a beneficiary is subject to the exercise of the trustee's discretion, whether or not the terms of a trust include a standard to guide the trustee in making distribution decisions, then the beneficiary's interest is neither a property interest nor an enforceable right, but a mere expectancy.

(c) Subject to the provisions of paragraph (a), unless the terms of the trust manifestly provide otherwise, if the terms of a trust permit distributions among a class of beneficiaries, distributions to or for the benefit of whom is subject to the exercise of the trustee's discretion without a standard to guide the trustee in making distribution decisions, then the trustee may make distributions unequally among the beneficiaries and may make distributions entirely to one beneficiary to the exclusion of the other beneficiaries.

(d) Subject to paragraph (f), and unless the terms of the trust expressly indicate that a rule in this paragraph does not apply:

(1) a person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee's personal benefit may exercise the power only in accordance with an ascertainable standard; and

(2) a trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.

(e) A power whose exercise is limited or prohibited by paragraph (d) may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special trustee with authority to exercise the power.

(f) Paragraph (d) does not apply to:

(1) a power held by the settlor's spouse who is the trustee of a trust for which a marital deduction was previously allowed under section 2056(b)(5) or 2523(e) of the Internal Revenue Code;

(2) any trust during any period that the trust may be revoked or amended by its settlor; or

(3) a trust if contributions to the trust qualify for the annual exclusion under section 2503(c) of the Internal Revenue Code.

17 Uniform Trust Code; Powers to Direct Trustee. RSA 564-B:8-808 is repealed and reenacted to read as follows:

564-B:8-808 Powers to Direct.

(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.

(b) If the terms of a trust, an agreement of the qualified beneficiaries, or a court order, confer upon a person (other than the settlor of a revocable trust) the power to direct certain actions of the trustee, then the trustee shall act in accordance with an exercise of the power.

(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

(d) A person who holds a power to direct is a trust advisor, except to the extent that the person is a beneficiary of the trust and, under such power, the person may direct the trustee to make distributions.

18 New Section; Uniform Trust Code; Governing Law. Amend article 9 of RSA 564-B by inserting after section 564-B:9-906 the following new section:

564-B:9-907 The provisions of article 9 of this code shall be construed as pertaining to the administration of a trust and as applicable to any trust that is administered in this state or that is governed by the laws of this state.

19 Uniform Trust Code; Trust Advisors and Trust Protectors. Article 12 of RSA 564-B is repealed and reenacted to read as follows:

ARTICLE 12**TRUST PROTECTORS AND TRUST ADVISORS****564-B:12-1201 Powers of Trust Advisors and Trust Protectors.**

(a) A trust protector or trust advisor is any person, other than a trustee, who under the terms of the trust, an agreement of the qualified beneficiaries, or a court order has a power or duty with respect to a trust, including, without limitation, one or more of the following powers:

(1) the power to modify or amend the trust instrument to achieve favorable tax status or respond to changes in any applicable federal, state, or other tax law affecting the trust, including (without limitation) any rulings, regulations, or other guidance implementing or interpreting such laws;

(2) the power to amend or modify the trust instrument to take advantage of changes in the rule against perpetuities, laws governing restraints on alienation, or other state laws restricting the terms of the trust, the distribution of trust property, or the administration of the trust;

(3) the power to appoint a successor trust protector;

(4) the power to review and approve a trustee's trust reports or accountings;

(5) the power to change the governing law or principal place of administration of the trust;

(6) the power to remove and replace any trust advisor or trust protector for the reasons stated in the trust instrument;

(7) the power to remove a trustee, cotrustee, or successor trustee, for the reasons stated in the trust instrument, and appoint a successor;

(8) the power to consent to a trustee's or cotrustee's action or inaction in making distributions to beneficiaries;

(9) the power to increase or decrease any interest of the beneficiaries in the trust, to grant a power of appointment to one or more trust beneficiaries, or to terminate or amend any power of appointment granted in the trust; however, a modification, amendment or grant of a power of appointment may not grant a beneficial interest in a charitable trust with only charitable beneficiaries to any non-charitable interest

or purpose and may not grant a beneficial interest in any trust to the trust protector or trust advisor, or to the estate or for the benefit of the creditors of such trust protector or such trust advisor;

(10) the power to perform a specific duty or function that would normally be required of a trustee or cotrustee;

(11) the power to advise the trustee or cotrustee concerning any beneficiary;

(12) the power to consent to a trustee's or cotrustee's action or inaction relating to investments of trust assets; and

(13) the power to direct the acquisition, disposition, or retention of any trust investment.

(b) The exercise of a power by a trust advisor or a trust protector shall be exercised in the sole and absolute discretion of the trust advisor or trust protector and shall be binding on all other persons.

564-B:12-1202 Trust Advisors and Trust Protectors as Fiduciaries.

(a) A trust advisor or trust protector, other than a beneficiary, is a fiduciary with respect to each power granted to such trust advisor or trust protector. In exercising any power or refraining from exercising any power, a trust advisor or trust protector shall act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

(b) A trust advisor or trust protector is an excluded fiduciary with respect to each power granted or reserved exclusively to any one or more other trustees, trust advisors, or trust protectors.

564-B:12-1203 Trust Advisor and Trust Protector Subject to Court Jurisdiction. By accepting appointment to serve as a trust advisor or trust protector, the trust advisor or the trust protector submits personally to the jurisdiction of the courts of this state even if investment advisory agreements or other related agreements provide otherwise, and the trust advisor or trust protector may be made a party to any action or proceeding relating to a decision, action, or inaction of the trust advisor or trust protector.

564-B:12-1204 No Duty to Review Actions of Trustee, Trust Advisor, or Trust Protector.

(a) Whenever, pursuant to the terms of a trust, an agreement of the qualified beneficiaries, or a court order, an excluded fiduciary is to follow the direction of a trustee, trust advisor, or trust protector with respect to investment decisions, distribution decisions, or other decisions of the excluded fiduciary, then, except to the extent that the terms of the trust, the agreement of the qualified beneficiaries, or the court order provides otherwise, the excluded fiduciary shall have no duty to:

(1) monitor the conduct of the trustee, trust advisor, or trust protector;

(2) provide advice to the trustee, trust advisor, or trust protector or consult with the trustee, trust advisor, or trust protector; or

(3) communicate with or warn or apprise any beneficiary or third party concerning instances in which the excluded fiduciary would or might have exercised the excluded fiduciary's own discretion in a manner different from the manner directed by the trustee, trust advisor, or trust protector.

(b) Absent clear and convincing evidence to the contrary, the actions of the excluded fiduciary pertaining to matters within the scope of the trustee, trust advisor, or trust protector's authority (such as confirming that the trustee, trust advisor, or trust protector's directions have been carried out and recording and reporting actions taken at the trustee,

trust advisor, or trust protector's direction or other information pursuant to RSA 564-B:8-813), shall be presumed to be administrative actions taken by the excluded fiduciary solely to allow the excluded fiduciary to perform those duties assigned to the excluded fiduciary under the terms of the trust, the agreement of the qualified beneficiaries, or the court order, and such administrative actions shall not be deemed to constitute an undertaking by the excluded fiduciary to monitor the trustee, trust advisor, or trust protector or otherwise participate in actions within the scope of the trustee, trust advisor, or trust protector's authority.

564-B:12-1205 Fiduciary's Liability for Action or Inaction of Trustee, Trust Advisor, and Trust Protector. An excluded fiduciary is not liable for (i) any loss resulting from any action or inaction of a trustee, trust advisor, or trust protector or (ii) any loss that results from the failure of a trustee, trust advisor, or trust protector to take any action proposed by the excluded fiduciary where such action requires the authorization of the trustee, trust advisor, or trust protector, provided that an excluded fiduciary who had a duty to propose such action timely sought but failed to obtain the authorization.

20 Uniform Principal and Income Act; Trustee Notice. Amend RSA 564-C:1-104(h)(1) to read as follows:

(1) The trustee shall mail notice of the proposed action to all qualified beneficiaries (as defined in RSA 564-B:1-103(12)) ~~[who are adults]~~ **of the trust who have attained 21 years of age** and to those persons who have the rights of a qualified beneficiary with respect to the trust under RSA 564-B:1-110. Notice may be given to any other beneficiary. Notice of the proposed action need not be given to any person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.

21 Uniform Principal and Income Act; Trustee Notice. Amend RSA 564-C:1-104(h)(4)-(5) to read as follows:

(4) If a trustee does not receive a written objection to the proposed action from the beneficiary **or the person who has the rights of a qualified beneficiary** within the applicable period, the trustee is not liable for the action to a beneficiary if:

(A) notice is mailed to ~~[the]~~ **such** beneficiary~~[-]~~ (or a person who may represent and bind the beneficiary under the provisions of article 3 of RSA 564-B) or ~~[the]~~ **such** person ~~[who has the rights of a qualified beneficiary]~~ at the address determined by the trustee after reasonable diligence;

(B) ~~[the]~~ **such** beneficiary (or a person who may represent and bind the beneficiary under the provisions of article 3 of RSA 564-B) or ~~[the]~~ **to such** person ~~[who has the rights of a qualified beneficiary]~~ receives actual notice; or

(C) ~~[the]~~ **such** beneficiary (or a person who may represent and bind the beneficiary under the provisions of article 3 of RSA 564-B) or ~~[the]~~ **such** person ~~[who has the rights of a qualified beneficiary]~~ consents in writing to the proposed action either before or after the action is taken.

(5) If the trustee receives a written objection within the applicable time period, either the trustee, a beneficiary or a person who has the rights of a qualified beneficiary may petition the court to have the proposed action performed as proposed, performed with modifications, or denied. In the proceeding, a beneficiary objecting to the proposed action or a person who has the rights of a qualified beneficiary objecting to the proposed action has the burden of proof as to whether the trustee's

proposed action should not be performed. A beneficiary who has not objected or a person who has the rights of a qualified beneficiary who has not objected is not estopped from opposing the proposed action in the proceeding. If the trustee decides not to implement the proposed action, the trustee shall notify the qualified beneficiaries of the trust ~~[who are adults]~~ **who have attained 21 years of age** and those persons who have the rights of a qualified beneficiary of the decision not to take the action and the reasons for the decision, and the trustee's decision not to implement the proposed action does not itself give rise to liability to any current or future beneficiary. A beneficiary or a person who has the rights of a qualified beneficiary may petition the court to have the action performed and has the burden of proof as to whether it should be performed.

22 Uniform Principal and Income Act; Distributions. Amend RSA 564-C:2-201(3) to read as follows:

(3) A fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright the interest or any other amount provided by the will or the terms of the trust from net income determined under subsection (2) or from principal to the extent that net income is insufficient. If a beneficiary is to receive a pecuniary amount outright and no interest or other amount is provided for by the will or by the terms of the trust ~~[then,]~~ **and** if the pecuniary amount is not distributed to the beneficiary within one year of the date of death of the testator or the date the income interest ends, **then** the fiduciary shall distribute to the beneficiary interest at the rate prescribed in RSA 336:1, II **on any amount that remains undistributed after such one-year anniversary until such pecuniary amount is distributed in full.**

23 Uniform Principal and Income Act; Trustee Notice. Amend RSA 564-C:5-501(a) to read as follows:

(a) **Except as otherwise ordered by a court**, so much of the compensation of the trustee and of any person providing investment advisory or custodial services to the trustee, and **so much of the** expenses for accounting, judicial proceedings, or other matters that involve the income and remainder interests as shall be determined by the trustee.

24 Uniform Principal and Income Act; Trustee Notice. Amend RSA 564-C:5-502(a)(1) to read as follows:

(1) ~~[the remaining 1/2 of the disbursements described in RSA 564-C:5-501(1) and (2) except as otherwise ordered by court]~~ **Such of the disbursements described in paragraph (a) of RSA 564-C:5-501 as are not charged to income;**

25 Uniform Principal and Income Act; Trustee Notice. Amend RSA 564-C:6-602(b) to read as follows:

(b) Except as otherwise provided in this chapter, on the effective date of this chapter, the chapter shall apply:

(1) to every inter vivos trust created on or after the effective date of this chapter except as otherwise expressly provided in the terms of the trust or in this chapter;

(2) to any inter vivos trust created before the effective date of this chapter upon the election of the trustee to apply this chapter made in writing and delivered to the beneficiaries then entitled to receive income and principal from the trust;

(3) to any estate ~~[existing]~~ or testamentary trust of a decedent who dies on or after the effective date of this chapter; **and**

(4) to any **other** estate or testamentary trust upon the approval by a court of competent jurisdiction, upon either (A) a petition filed by an interested person or (B) the court on its own motion.

26 Repeal. RSA 564-A:3-c, relative to the power to convert to unitrusts, is repealed.

27 New Section; Uniform Principal and Income Act; Trustee's Power to Convert to Unitrust. Amend RSA 564-C by inserting after section 1-105 the following new section:

564-C:1-106 Trustee's Power to Convert to Unitrust.

(a) Unless expressly prohibited by the terms of the trust, a trustee may convert a trust into a unitrust as described in this section if all of the following apply:

(1) The trustee determines that the conversion will enable the trustee to better carry out the intent of the settlor or testator and the purposes of the trust.

(2) The trustee gives written notice of the trustee's intention to convert the trust into a unitrust and of how the unitrust will operate, including what initial decisions the trustee will make under this section, to all the sui juris beneficiaries who:

(A) are currently eligible to receive income from the trust;

(B) would be eligible, if a power of appointment were not exercised, to receive income from the trust if the interest of all the beneficiaries eligible to receive income under subparagraph (a)(2)(A) were to terminate immediately before the giving of notice; and

(C) would receive, if no powers of appointment were exercised, a distribution of principal if the trust were to terminate immediately prior to the giving of notice.

(3) There is at least one sui juris beneficiary under subparagraph (a)(2)(A) and at least one sui juris beneficiary under subparagraph (a)(2)(B).

(4) No sui juris beneficiary objects to the conversion to a unitrust in a writing delivered to the trustee within 60 days of the mailing of the notice under subparagraph (a)(2).

(b)(1) The trustee may petition the court to approve the conversion to a unitrust if any of the following apply:

(A) A beneficiary timely objects to the conversion to a unitrust.

(B) There are no sui juris beneficiaries under subparagraph (a)(2)(A).

(C) There are no sui juris beneficiaries under subparagraph (a)(2)(C).

(2) A beneficiary may request a trustee to convert to a unitrust. If the trustee does not convert, the beneficiary may petition the court to order the conversion.

(3) The court shall approve the conversion or direct the requested conversion if the court concludes that the conversion will enable the trustee to better carry out the intent of the settlor or testator and the purposes of the trust.

(c) In deciding whether to exercise the power conferred by paragraph (a), a trustee may consider, among other things, all of the following:

(1) the size of the trust;

(2) the nature and estimated duration of the trust;

(3) the liquidity and distribution requirements of the trust;

(4) the needs for regular distributions and preservation and appreciation of capital;

(5) the expected tax consequences of the conversion;

(6) the assets held in the trust; the extent to which they consist of financial assets; interests in closely held enterprises, tangible and intangible personal property or real property; and the extent to which an asset is used by a beneficiary.

(7) to the extent reasonably known to the trustee, the needs of the beneficiaries for present and future distributions authorized or required by the terms of the trust;

(8) whether and to what extent the terms of the trust gives the trustee the power to invade principal or accumulate income or prohibits the trustee from invading principal or accumulating income and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income; and

(9) the actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation.

(d) After a trust is converted to a unitrust, all of the following apply:

(1) The trustee shall follow an investment policy seeking a total return for the investments held by the trust, whether the return is to be derived:

(A) from appreciation of capital;

(B) from earnings and distributions from capital; or

(C) from both.

(2) The trustee shall make regular distributions in accordance with the governing instrument construed in accordance with the provisions of this section.

(3) Under the terms of the trust, the term "income" shall mean an annual distribution (the unitrust distribution) equal to not less than 3 percent nor more than 5 percent (the payout percentage) of the net fair market value of the trust's assets as determined at the end of the calendar year, whether such assets would be considered income or principal under other provisions of this chapter, averaged over the lesser of:

(A) The 3 preceding years; or

(B) The period during which the trust has been in existence.

(e) The trustee may in the trustee's discretion from time to time determine all of the following:

(1) The effective date of a conversion to a unitrust.

(2) The provisions for prorating a unitrust distribution for a short year in which a beneficiary's right to payments commences or ceases.

(3) The frequency of unitrust distributions during the year.

(4) The effect of other payments from or contributions to the trust on the trust's valuation.

(5) How frequently to value nonliquid assets and whether to estimate their value.

(6) Whether to omit from the calculations trust property occupied or possessed by a beneficiary.

(7) Any other matters necessary for the proper functioning of the unitrust.

(f)(1) Expenses which would be deducted from income if the trust were not a unitrust may not be deducted from the unitrust distribution.

(2) Unless otherwise provided by the governing instrument, the unitrust distribution shall be paid from net income, as such term would be determined if the trust were not a unitrust. To the extent net income is insufficient, the unitrust distribution shall be paid from net realized short-term capital gains. To the extent income and net realized short-term capital gains are insufficient, the unitrust distribution shall be paid from net realized long-term capital gains. To the extent income and net realized short-term and long-term capital gains are insufficient, the unitrust distribution shall be paid from the principal of the trust.

(g) The trustee or, if the trustee declines to do so, a beneficiary may petition the court to:

(1) select a payout percentage different than 3 to 5 percent;

(2) provide for a distribution of net income, as would be determined if the trust were not a unitrust, in excess of the unitrust distribution if such distribution is necessary to preserve a tax benefit;

(3) average the valuation of the trust's net assets over a period other than 3 years; or

(4) Reconvert from a unitrust.

(h) A conversion to a unitrust does not affect a term of the trust directing or authorizing the trustee to distribute principal or authorizing a beneficiary to withdraw a portion or all of the principal.

(i) A trustee may not convert a trust into a unitrust in any of the following circumstances:

(1) If payment of the unitrust distribution would change the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets.

(2) If the unitrust distribution would be made from any amount which is permanently set aside for charitable purposes under the terms of the trust and for which a federal estate or gift tax deduction has been taken, unless both income and principal are so set aside.

(3) If:

(A) Possessing or exercising the power to convert would cause an individual to be treated as the owner of all or part of the trust for federal income tax purposes; and

(B) The individual would not be treated as the owner if the trustee did not possess the power to convert.

(4) If:

(A) possessing or exercising the power to convert would cause all or part of the trust assets to be subject to federal estate or gift tax with respect to an individual; and

(B) the assets would not be subject to federal estate or gift tax with respect to the individual if the trustee did not possess the power to convert.

(5) If the conversion would result in the disallowance of a federal estate tax or gift tax marital deduction which would be allowed if the trustee did not have the power to convert.

(6) If the trustee is a beneficiary of the trust.

(j)(1) If subparagraph (i)(3), (i)(4), or (i)(5) applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may convert the trust, unless the exercise of the power by the remaining trustee or trustees is prohibited by the terms of the trust.

(2) If subparagraph (i)(3), (i)(4), or (i)(5) applies to all the trustees, the trustees may petition the court to direct a conversion.

(k) A trustee may permanently release the power conferred by paragraph (a) or may release the power conferred by paragraph (a) for a specified period including a period measured by the life of an individual to convert to a unitrust if any of the following apply:

(1) The trustee is uncertain about whether possessing or exercising the power will cause a result described in subparagraph (i)(3), (i)(4), or (i)(5).

(2) The trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in paragraph (i).

(l) The provisions of RSA 564-B:3-304 shall apply with respect to beneficiaries other than sui juris beneficiaries.

(m) Any trustee or disinterested person who in good faith takes or fails to take any action under this section shall not be liable to any person affected by such action or inaction, regardless of whether such person received written notice as provided in this section and regardless of whether such person was under a legal disability at the time of the delivery of such notice. Such person's exclusive remedy shall be to obtain an order of the court directing the trustee to convert an income trust to a unitrust, to reconvert from a unitrust to an income trust, or to change the percentage used to calculate the unitrust amount.

(n) This section shall be construed as pertaining to the administration of a trust and shall be available to any trust that is administered in New Hampshire or that is governed by the laws of this section unless:

(1) the terms of the trust reflect an intention that the current beneficiary or beneficiaries are to receive an amount other than a reasonable current return from the trust;

(2) the trust is a trust having a guaranteed annuity interest or fixed percentage interest as described in section 170(f)(2)(B) of the Internal Revenue Code, a pooled income fund (within the meaning of section 642(c)(5) of the Internal Revenue Code), a charitable remainder trust (within the meaning of section 664(d) of the Internal Revenue Code), a qualified subchapter S trust (within the meaning of section 1361(c) of the Internal Revenue Code), a personal residence trust (within the meaning of section 2702(a)(3)(A) of the Internal Revenue Code), or a trust in which one or more settlors retained a qualified interest (within the meaning of section 2702(b) of the Internal Revenue Code);

(3) one or more persons to whom the trustee could distribute income have a power of withdrawal over the trust that is not subject to an ascertainable standard or that can be exercised to discharge a duty of support he or she possesses; or

(4) the terms of the trust expressly prohibit the use of this section by specific reference to the chapter or expressly states the settlor's intent that net income not be calculated as a unitrust amount.

28 New Chapter; Qualified Dispositions in Trust Act. Amend RSA by inserting after chapter 564-C the following new chapter:

CHAPTER 564-D

QUALIFIED DISPOSITIONS IN TRUST ACT

564-D:1 Definitions.

I. "Claim" means a right to payment, whether or not the right is reduced to judgment liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

II. "Creditor" means, with respect to a transferor, a person who has a claim.

III. "Debt" means liability on a claim.

IV. "Disposition," means a conveyance, assignment or any other transfer of property, including a change in the legal ownership of property occurring upon the substitution of one trustee for another or the addition of one or more new trustees, or the exercise of a power so as to cause a transfer of property to a trustee or trustees. The term "disposition" shall not include the release or relinquishment of an interest in property that theretofore was the subject of a qualified disposition.

V. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended and as in effect from time to time.

VI. "Property" means real property, personal property, and interests in real or personal property.

VII. "Qualified disposition" means a disposition by or from a transferor to a qualified trustee or qualified trustees, with or without consideration, by means of a trust instrument.

VIII. "Spouse" and "former spouse" means only persons to whom the transferor was married at, or before, the time the qualified disposition is made.

IX. "Transferor" means any person as an owner of property; as a holder of a power of appointment which authorizes the holder to appoint in favor of the holder, the holder's creditors, the holder's estate, or the creditors of the holder's estate; or as a trustee, directly or indirectly, who makes a disposition or causes a disposition to be made.

564-D:2 Trust Instrument Defined.

I. For the purposes of this chapter, a trust instrument is a trust instrument (within the meaning of RSA 564-B:1-103(20)) that appoints a qualified trustee for the property that is the subject of a disposition and meets the following requirements:

(a) The trust instrument expressly incorporates the law of this state to govern the validity, construction, and administration of the trust;

(b) The trust instrument is irrevocable; and

(c) The trust instrument provides that the interest of the transferor or other beneficiary in the trust property or the income therefrom may not be transferred, assigned, pledged, or mortgaged, whether voluntarily or involuntarily, before the qualified trustee or qualified trustees actually distribute the property or income therefrom to the beneficiary, and such provision of the trust instrument shall be deemed to be a restriction on the transfer, assignment, pledge, or mortgage of the transferor's beneficial interest in the trust that is enforceable under applicable nonbankruptcy law within the meaning of section 541(c)(2) of the Bankruptcy Code (11 U.S.C. section 541(c)(2)) as it exists as of the time such restriction is established.

II. For purposes subparagraph I(b), a trust instrument shall not be deemed revocable on account of the inclusion of any one or more of the following rights, powers and interests:

(a) A transferor's power to veto a distribution from the trust;

(b) A power of appointment, other than a power to appoint to the transferor, the transferor's creditors, the transferor's estate, or the creditors of the transferor's estate, exercisable by will or other written instrument of the transferor effective only upon the transferor's death;

(c) The transferor's potential or actual receipt of income, including rights to such income retained in the trust instrument;

(d) The transferor's potential or actual receipt of income or principal from a charitable remainder unitrust or charitable remainder annuity trust (each within the meaning of section 664(d) of the Internal Revenue Code) and the transferor's right, at any time, and from time to time, to release, in writing delivered to the qualified trustee, all or any part of the transferor's retained interest in such trust, in favor of one or more charitable organizations that have a remainder interest in such trust at the time of such release;

(e) The transferor's receipt each year of a percentage, not to exceed 5 percent, specified in the trust instrument of the initial value of the trust assets or their value determined from time to time pursuant to the trust instrument;

(f) The transferor's potential or actual receipt or use of principal if such potential or actual receipt or use of principal would be the result of a qualified trustee or qualified trustees, including a qualified trustee or

qualified trustees acting at the direction of a trust advisor described in RSA 564-D:4, acting either in such qualified trustee's or qualified trustees' sole discretion or pursuant to an ascertainable standard contained in the trust instrument;

(g) The transferor's right to remove a trustee or trust advisor and to appoint a new trustee or trust advisor, other than a person who is a related or subordinate party with respect to the transferor (within the meaning of section 672(c) of the Internal Revenue Code);

(h) The transferor's potential or actual use of real property held under a personal residence trust (within the meaning of such term as described in section 2702(c) of the Internal Revenue Code);

(i) The transferor's potential or actual receipt or use of a qualified annuity interest (within the meaning of such term described in section 2702 of the Internal Revenue Code); and

(j) The ability, whether pursuant to discretion or direction, of a qualified trustee to pay, after the transferor's death, all or any part of the transferor's debts outstanding at the time of the transferor's death, the expenses of administering the transferor's estate, or any estate inheritance tax imposed on or with respect to the transferor's estate.

III. For purposes of subparagraph I(b), a trust instrument shall not be deemed revocable on account of the transferor's potential or actual receipt of income or principal to pay, in whole or in part, income taxes due on trust income if such receipt of income or principal is pursuant to a provision in the trust instrument that expressly provides for the payment of such taxes and such receipt of income or principal results from (i) the qualified trustee's acting in such qualified trustee's discretion or (ii) the qualified trustee acting at the direction of a trust advisor who is acting in such trust advisor's discretion. Any distribution to pay income taxes made under discretion included in a trust instrument pursuant to subparagraphs II(c), (f), and (i) may be made by direct payment to the taxing authorities.

IV. A disposition by a trustee that is not a qualified trustee to a trustee that is a qualified trustee may not be treated as other than a qualified disposition solely because the trust instrument fails to meet the requirements of paragraph I.

564-D:3 Qualified Trustee Defined. For the purposes of this chapter, a qualified trustee is any person, other than the transferor, who in the case of a natural person, is a resident of this state or who, in all other cases, is a state or federally chartered bank or trust company having a place of business in New Hampshire, is authorized to engage in a trust business in this state, and maintains or arranges for custody in this state of some or all of the property that is the subject of the qualified disposition, maintains records in this state for the trust on an exclusive or nonexclusive basis, prepares or arranges for the preparation in this state of fiduciary income tax returns for the trust, or otherwise materially participates in this state in the administration of the trust.

564-D:4 Persons Not Eligible to be Considered a Qualified Trustee; Appointment of Trust Advisors. Neither the transferor nor any other natural person who is a nonresident of this state nor an entity that is not authorized by the law of this state to act as a trustee or whose activities are not subject to supervision as provided in RSA 564-D:3 may be considered a qualified trustee. However, nothing in this chapter precludes a transferor from appointing one or more trust advisors (whether or not such trust advisors would meet the requirements imposed by RSA 564-D:3), including, but not limited to:

I. Trust advisors who have authority under the terms of the trust instrument to remove and appoint qualified trustees or trust advisors; and

II. Trust advisors who have authority under the terms of the trust instrument to direct, consent to, or disapprove distribution from the trust. For purposes of this section, the term trust advisor includes a trust advisor as described in RSA 564-B:1-103(26), a trust protector as described in RSA 564-B:1-103(27), or any other person who, in addition to a qualified trustee, holds one or more trust powers.

564-D:5 Transferor May Serve as Trust Advisor. Any individual, including the transferor of the qualified disposition, may serve as a trust advisor as described in RSA 564-D:4. However, if such transferor serves as the trust advisor, his or her rights and powers as a trust advisor shall be limited to the right to disapprove distributions from the trust and the right to consent to a trustee's action or inaction relating to the investment of trust assets.

564-D:6 Successor Qualified Trustee. If a qualified trustee of a trust ceases to meet the requirements of RSA 564-D:3, and there remains no trustee that meets such requirements, such formerly qualified trustee shall be deemed to have resigned as of the time of such cessation, and thereupon the successor qualified trustee provided for in the trust instrument shall become a qualified trustee of the trust, effective upon such successor qualified trustee's acceptance of the office of trustee, or, if such named successor qualified trustee is unable or unwilling to accept such office, or if the trust instrument does not provide for any successor qualified trustee, the probate court shall, upon application of any interested party, appoint a successor qualified trustee.

564-D:7 Disposition to More Than One Trustee. In the case of a disposition to more than one trustee, a disposition that is otherwise a qualified disposition may not be treated as other than a qualified disposition solely because not all of the trustees are qualified trustees.

564-D:8 Transferor's Powers and Rights. A qualified disposition is subject to RSA 564-D:9 to RSA 564-D:14, inclusive, notwithstanding a transferor's retention of any or all of the powers and rights described in RSA 564-D:2, II or the transferor's service as trust advisor pursuant to RSA 564-D:5. The transferor has only such powers and rights as are conferred by the trust instrument. Except as permitted by RSA 564-D:2 and RSA 564-D:5, a transferor has no rights or authority with respect to the property that is the subject of a qualified disposition or the income therefrom, and any agreement or understanding purporting to grant or permit the retention of any greater rights or authority is void.

564-D:9 Restrictions on Attachment or Other Provisional Remedy Against Property. Notwithstanding any other provision of law, no action of any kind, including an action to enforce a judgment entered by a court or other body having adjudicative authority, may be brought at law or in equity for an attachment or other provisional remedy against property that is the subject of a qualified disposition or for avoidance of a qualified disposition unless such action is brought pursuant to the provisions of RSA 545-A, the Uniform Fraudulent Transfer Act, or RSA 564-D:15.

564-D:10 Extinguishment of Creditor's Claim. A creditor's claim under RSA 564-D:9 is extinguished unless:

(a) The creditor's claim arose before the qualified disposition was made and the action is brought within the limitations of RSA 545-A, the Uniform Fraudulent Transfer Act, in effect on the date of the qualified disposition; or

(b) Notwithstanding the provisions of RSA 545-A, the Uniform Fraudulent Transfer Act, the creditor's claim arose on or after the date of the qualified disposition, and the action is brought within 4 years after such date.

564-D:11 Qualified Disposition Made by Transferor Who is Trustee. A qualified disposition that is made by means of a disposition by a transferor who is a trustee is deemed to have been made as of the time, whether before, on, or after the effective date of this chapter, the property that is the subject of the qualified disposition was originally transferred to the transferor (or any predecessor trustee), in a form that meets the requirements of RSA 564-D:2, II, III, and IV.

564-D:12 Creditor's Rights With Respect to a Qualified Disposition. Notwithstanding any law to the contrary, a creditor, including a creditor whose claim arose before, at the time of or after a qualified disposition, or any other person has only such rights with respect to a qualified disposition as are provided in RSA 564-D:9 to RSA 564-D:16, inclusive, and no such creditor nor any other person has any claim or cause of action against the trustee, or an advisor described in RSA 564-D:4, of a trust that is the subject of a qualified disposition, or against any person involved in the counseling, drafting, preparation, execution, or funding of a trust that is the subject of a qualified disposition.

564-D:13 Actions Against Trustee of Trust That is the Subject of a Qualified Disposition Barred. Notwithstanding any other provision of law, no action of any kind, including an action to enforce a judgment entered by a court or other body having adjudicative authority, may be brought at law or in equity against the trustee, or advisor described in RSA 564-D:4, of a trust that is the subject of a qualified disposition, or against any person involved in the counseling, drafting, preparation, execution, or funding of a trust that is the subject of a qualified disposition, if, as of the date such action is brought, an action by a creditor with respect to such qualified disposition would be barred under RSA 564-D:9 to RSA 564-D:12, inclusive.

564-D:14 More Than One Qualified Disposition is Made by Means of Same Trust Instrument. If more than one qualified disposition is made by means of the same trust instrument:

I. The making of a subsequent qualified disposition shall be disregarded in determining whether a creditor's claim with respect to a prior qualified disposition is extinguished as provided in RSA 564-D:10;

II. With respect to each subsequent qualified disposition, the limitations period with respect to actions brought under RSA 545-A, the Uniform Fraudulent Transfer Act, shall commence on the date such qualified disposition is made; and

III. Any distribution to a beneficiary is deemed to have been made from the latest such qualified disposition.

564-D:15 Persons Exempt From Application of Qualified Disposition Provisions.

I. Notwithstanding the provisions of RSA 564-D:9 to RSA 564-D:14, inclusive, this chapter does not apply in any respect:

(a) To any person to whom the transferor is indebted on account of an antenuptial agreement or an agreement or order of court for the payment of support or alimony in favor of such transferor's spouse, former spouse, or children, or for a division or distribution of property in favor of such transferor's spouse or former spouse, but only to the extent of such debt; or

(b) To any person who suffers death, personal injury, or property damage on or before the date of a qualified disposition by a transferor,

which death, personal injury, or property damage is at any time determined to have been caused in whole or in part by the act or omission of either such transferor or by another person for whom such transferor is or was vicariously liable.

II. Paragraph I shall not apply to any claim for forced heirship or legitimate or the elective share of the transferor's surviving spouse, unless the transferor make the qualified disposition for the purpose of defeating the surviving spouse's elective share rights.

564-D:16 Avoidance of Qualified Disposition. A qualified disposition is avoided only to the extent necessary to satisfy the transferor's debt to the creditor at whose instance the disposition had been avoided, together with such costs, including attorney's fees, as the court may allow. If any qualified disposition is avoided as provided in this section, then:

I. If the court is satisfied that a qualified trustee has not acted in bad faith in accepting or administering the property that is the subject of the qualified disposition:

(a) Such qualified trustee has a first and paramount lien against the property that is the subject of the qualified disposition in an amount equal to the entire cost, including attorney's fees, properly incurred by such qualified trustee in the defense of the action or proceedings to avoid the qualified disposition. It is presumed that such qualified trustee did not act in bad faith merely by accepting such property; and

(b) The qualified disposition is avoided subject to the proper fees, costs, preexisting rights, claims, and interests of such qualified trustee, and of any predecessor qualified trustee that has not acted in bad faith; and

II. If the court is satisfied that a beneficiary of a trust has not acted in bad faith, the avoidance of the qualified disposition is subject to the right of such beneficiary to retain any distribution made upon the exercise of a trust power or discretion vested in the qualified trustee or qualified trustees of such trust, which power or discretion was properly exercised prior to the creditor's commencement of an action to avoid the qualified disposition. It is presumed that the beneficiary, including a beneficiary who is also a transferor of the trust, did not act in bad faith merely by creating the trust or by accepting a distribution made in accordance with the terms of the trust.

564-D:17 Applicability. This chapter shall apply to qualified dispositions and dispositions by transferors who are trustees made after January 1, 2009.

564-D:18 Short Title. This chapter shall be known and may be referred to as the "Qualified Dispositions in Trust Act."

29 Uniform Trust Code; Representation; Reference Change. Amend RSA 564-B:3-304 to read as follows:

564-B:3-304 Representation by Person Having Substantially Identical Interest. Unless otherwise represented, a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest between the representative and the person represented. Nothing in this section shall expand or limit the virtual representation of sui juris beneficiaries for purposes of RSA ~~[564-A:3-c]~~ **564-C:1-106**.

30 Uniform Trust Code; Duties and Powers of Trustee; Reference Change. Amend RSA 564-B:8-816(a)(29) to read as follows:

(29) convert a trust into a unitrust as provided in RSA ~~[564-A:3-c]~~ **564-C:1-106**.

31 Uniform Principal and Income Act; Definitions; Reference Change. Amend RSA 564-C:1-102(8) to read as follows:

(8) "Net income" means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under this chapter to or from income during the period. During any period in which the trust is being administered as a unitrust, either pursuant to the powers conferred by RSA ~~[564-A:3-c]~~ **564-C:1-106** or pursuant to the terms of the will or the trust, "net income" means the unitrust amount, if the unitrust amount is no less than 2 percent and no more than 8 percent of the fair market value of the trust assets whether determined annually or averaged on a multiple year basis.

32 Uniform Principal and Income Act; Fiduciary Duties; Reference Change. Amend RSA 564-C:1-103(b) to read as follows:

(b) In exercising the power to adjust under RSA 564-C:1-104(a), the power to convert into a unitrust or reconvert or change the unitrust payout percentage pursuant to RSA ~~[564-A:3-c]~~ **564-C:1-106** or a discretionary power of administration regarding a matter within the scope of this chapter, whether granted by the terms of a trust, a will, this chapter or other applicable law, a fiduciary shall administer a trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will express an intention that the fiduciary shall or may favor one or more of the beneficiaries. The exercise of discretion by a fiduciary in accordance with this chapter is presumed to be fair and reasonable to all of the beneficiaries.

33 Uniform Principal and Income Act; Trustee's Power to Adjust; Reference Change. Amend RSA 564-C:1-104(c)(8) to read as follows:

(8) if the trust is being administered as a unitrust pursuant to the trustee's exercise of the power to convert to a unitrust provided in RSA ~~[564-A:3-c]~~ **564-C:1-106** or pursuant to the terms of the will or the terms of the trust.

34 Effective Date. This act shall take effect 60 days after its passage.

SENATOR CILLEY: Thank you, Madam President. I move Senate Bill 465 ought to pass as amended. This bill makes certain changes to the laws regarding trusts and trust companies. The Committee voted unanimously to pass Senate Bill 465 which was amended to address certain trust provisions only. All banking provisions have been removed from the bill. The final product represents two months of a comprehensive, collaborative effort on behalf of the Banking Department, the New Hampshire Bankers Association, and legal experts, to improve New Hampshire's trust laws. The Committee heard testimony from those who crafted the amendment that this legislation is consistent with current law, mirrors provisions enacted in eight other states, and will help create jobs in our state. The Commerce, Labor and Consumer Protection Committee asks for your support in voting Senate Bill 465 ought to pass as amended. Thank you, Madam President.

(The Chair recognized Sen. D'Allesandro to speak.)

SENATOR D'ALLESANDRO: I rise in support of the amendment, and want to thank the chairman of the Committee and the members of the Committee for doing an outstanding job on this piece of legislation. This piece of legislation puts New Hampshire on the cutting edge as far as trust legislation is concerned in the United States. There was an article in the *Wall Street Journal* about New Hampshire, and in the *Financial*

Times which spoke kindly to what we're doing in New Hampshire and giving us praise for the work that's being done. So I commend the work of the Committee, I thank them, and appreciate the support of the Senate. Thank you.

The question is on the adoption of Committee Amendment 0892s. Committee Amendment 0892s adopted.

The question is on the adoption of Ought to Pass as Amended on Senate Bill 465.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 540-FN, relative to a standard wellness plan for small employers. Commerce, Labor and Consumer Protection Committee. Ought to Pass with Amendment, Vote 5-0. Senator Gottesman for the committee.

Commerce, Labor and Consumer Protection

March 18, 2008

2008-1055s

01/09

Amendment to SB 540-FN

Amend the title of the bill by replacing it with the following:

AN ACT relative to New Hampshire HealthFirst, an affordable, wellness-based health insurance plan for small employers.

Amend the bill by replacing section 1 with the following:

1 New Section; New Hampshire HealthFirst; Standard Wellness Plan for Small Employers. Amend RSA 420-G by inserting after section 4-a the following new section:

420-G:4-b New Hampshire HealthFirst; Standard Wellness Plan for Small Employers.

I. The purpose of this section is to:

(a) Promote the availability of more affordable health coverage in the small employer market by engaging consumers, health care providers, insurers, and small employers to address the underlying costs of health care through better care management and more efficient utilization of health care services without increasing overall cost sharing requirements or reducing coverage for services essential to health and wellness.

(b) Enhance competition among health carriers in the small employer market by facilitating comparison of a standard plan.

II. If a health carrier offers coverage in the small employer market in this state and had at least 1,000 covered lives in this market at the end of the prior calendar year, such carrier shall be required to offer the standard wellness plan to small employers. The standard wellness plan shall be offered on a guaranteed issue basis to all small employers in the state. If a health carrier is part of an insurance holding company system, as defined in RSA 401-B:1, IV, in which 2 or more affiliates, as defined in RSA 401-B:1, I, are licensed health carriers in the state with a combined New Hampshire small group membership of at least 1,000 covered lives at the end of the prior calendar year, the requirement in this paragraph to offer the standard wellness plan to all small employers shall apply. However, only one such health carrier affiliate in the holding company group shall be subject to the requirement.

III. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to the requirements for the standard wellness plan. Before adopt-

ing rules, the commissioner shall convene a standing advisory committee to include representatives of small employers, business groups and associations of small employers, consumers who obtain their coverage through the small employer market, one representative, appointed by the speaker of the house of representatives and one member of the senate, appointed by the president of the senate. The advisory committee shall, at least once every 3 years, make recommendations to the insurance commissioner on the requirements for the standard wellness plan. Prior to making these recommendations, the advisory committee shall consult with interested health carriers, health insurance producers, health care providers, and, as necessary and appropriate, other available experts. The plan shall include benefit structure, cost sharing requirements, and provider payment initiatives to promote the delivery of quality care. The committee shall recommend an out-of-pocket maximum for the standard wellness plan.

IV. The commissioner shall ensure that the standard wellness plan creates incentives for consumers, health care providers, employers, and/or health carriers to:

(a) Promote wellness.

(b) Promote primary care, preventive care, and a medical home model.

(c) Manage and coordinate care for persons with chronic health conditions or acute illness.

(d) Promote the use of cost effective care.

(e) Promote quality of care by the use of evidence-based, best practice standards and patient-centered care.

V. To the extent practicable, health carriers shall be permitted to utilize existing programs to meet the requirements for the standard wellness plan.

VI. The plan shall be made available in accordance with this section on or before October 1, 2009 and shall be reviewed and revised as necessary, but no less frequently than once every 3 years thereafter.

VII.(a) The standard wellness plan requirements shall be established so that small employer health insurance carriers would be reasonably expected to set the plan's health coverage plan rate, as defined in RSA 420-G:4, I(c), at or below 10 percent of the prior year's median statewide wage as reported by the United States Department of Labor. Small employer carriers shall be required to file their standard wellness plan rates 60 days prior to the date on which the plan is to be made available. If no small employer carrier files a health coverage plan rate at or below the stated target, then the commissioner shall engage actuarial experts at the expense of the small employer carriers who are subject to the requirements of this section and hold a hearing to determine whether small employer carriers shall be compelled to offer the standard wellness plan at a health coverage plan rate equal to the target or whether changes should be made to the standard wellness plan requirements to adjust benefits or cost sharing requirements.

(b) Between plan revisions, carriers may request rate adjustments with appropriate supporting documentation. However, the commissioner shall not grant any rate adjustment in excess of the carrier's overall small group trend.

VIII. In establishing the requirements for the standard wellness plan, the commissioner:

(a) May require the use of qualified wellness or disease management programs and the use of rating factors for such programs as provided in RSA 420-G:4-a.

(b) Shall prohibit small employer carriers from offering nonconforming products with similar benefit designs with the intent or likely effect of undermining the purposes of this section.

(c) Shall require small employer carriers to illustrate or quote the standard wellness plan together with any proposal or quote provided to any small employer.

IX. Except as specifically provided in this section, all statutory and regulatory requirements applicable to small employer health benefit plans shall apply to the standard wellness plan.

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AMENDED ANALYSIS

This bill establishes New Hampshire HealthFirst, a standard wellness plan for small employers.

SENATOR GOTTESMAN: Thank you, Madam President. I move Senate Bill 540 ought to pass with amendment. This bill establishes New Hampshire HealthFirst, a standard wellness plan for small employers. Recognizing the increasing burden of rising healthcare costs on small businesses and their employees, Senate Bill 540 is designed to lower cost for a business as a way to stabilize the small group market and support employer efforts to maintain coverage. The Committee heard testimony from healthcare providers, insurance experts, and small business employers, who all agree New Hampshire HealthFirst will help small employers maintain affordable health coverage by focusing on quality and wellness. New Hampshire HealthFirst will directly address some of the most costly drivers of healthcare expenses by providing financial incentives for evidence-based, best-practice quality of care, chronic illness coordination and management, wellness practice and disease prevention. Currently, such financial incentives are available only to large employers who can include these innovative and cost-savings measures in their large group plans. New Hampshire HealthFirst will create a more competitive market for small business products and encourage insurers to increase efficiencies and reduce overhead costs. The bill was amended in committee to change the appointment authority for the standing advisory committee members, changing how legislative members are appointed, giving that power to the Senate President and to the Speaker of the House. The advisory committee is required to consult with health insurance carriers, healthcare providers, and other experts to recommend the details of the planned design. The standard wellness plan requirements will be reviewed and revised through the advisory committee process once every three years. The Commerce, Labor and Consumer Protection Committee asks for your support on this amended legislation. Thank you, Madam President.

(The Chair recognized Sen. Sgambati to speak.)

SENATOR SGAMBATI: Thank you, Madam President. I rise in support of the bill. This bill has been almost a year in the making, including input from employers, providers, insurance – insurers and policymakers through the efforts of the Citizens' Health Initiative. It's important that we provide our small businesses with affordable options. The rate of increase in premiums is not sustainable for them, and they are struggling to maintain coverage. Their only options in the recent past has been to either absorb those costs or pass those costs on to their employees. This plan would make coverage for them more affordable, not by diluting benefits, but by addressing the underlying drivers of health costs, as

Sen. Gottesman spoke of. The bill requires the development of a wellness plan. The plan is not outlined in legislation, only the requirements for it. The plan needs to include incentives for consumers, healthcare providers, employers and other health carriers; incentives to promote better consumer care, better disease management, and more efficient utilization of our healthcare resources. Carriers who have – cover at least a thousand lives in the state will be required to offer the plan. An important feature of the plan is its price targets. Those price targets will ensure that coverage will stay affordable for small businesses. The target is 10 percent of the previous year's state median wage. In practicality, right now that translates to about a 19 percent reduction to the average premium of a plan, or about 17 percent of the cost, cost reduction to the typical HMO plan. There are protections, however, in this for carriers, that if these targets are not actuarially sound, if no carrier can meet the price target, and it is found to be unreasonable, an independent actuary will determine whether the plan can be priced at that target. The Commissioner then, if they find it is not, the Commissioner is able to adjust the benefits or the cost-sharing to generate a price that meets that target. It is my hope that this product could act as a model in the future. It requires that we address the waste and inefficiency in our healthcare system. None of the business sector, business community can continue to absorb the sticker shock they get every year at policy renewal time. As stated, innovative employers have already shown quality effectiveness improvements and efficiency improvements through waste and realignments of incentives. The bill encourages competition based on quality and efficiency, not cost-shifting; and it is an innovative market-based approach and one that I hope will merit your support. Thank you. (The Chair recognized Sen. Gatsas for a question of Sen. Sgambati.)

SENATOR GATSAS: Senator, you gave out some percentages.

SENATOR SGAMBATI: Yes.

SENATOR GATSAS: Can you tell me what those monthly rates are, based on those percentages, are, please.

SENATOR SGAMBATI: I don't have the data, the backup data with me. I know that the median – ten percent of the median wage equates to a 19 percent reduction at the current average cost of the plan.

SENATOR GATSAS: Follow-up? So the median family income, if I said was, if we'd understand it as being 57,500, ten percent of that would be 5750 per year, divided by 12 for a monthly rate; is that correct?

SENATOR SGAMBATI: Right.

SENATOR GATSAS: So that rate would be somewhere around 431 a month.

SENATOR SGAMBATI: No, my understanding from the calculations – and I'm sorry I don't have the backup data here – was that it was about 262. I can't walk through the calculations with you, 'cause I don't have the data here.

SENATOR GATSAS: Thank you.

Recess/Out of Recess.

The question is on the adoption of Committee Amendment 1055s to SB 540-FN.

Committee Amendment 1055s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 540-FN.

(The Chair recognized Sen. Gatsas to speak.)

SENATOR GATSAS: Thank you, Madam President. I don't think anybody in this chamber would ever say that we shouldn't make every attempt possible to reduce the cost of health insurance. But when we leave it up to a rulemaking body, as this does, I think that's wrong. I sat through a study committee on Senate Bill 135, it was a legislative committee on lowering health insurance costs for small businesses. We had discussions about an awful lot of things, and this presentation was given to us by the Department of Insurance. And just before we came out of recess, Sen. Sgambati gave me a number that said the median annual wage is \$15.11 per hour, for 2006, and that would be 3142 per year, less ten percent is the 262 per member per month. So we're saying that health insurance is going to be, for a basic plan, 262 per member per month. Interesting enough, in this report that we received, the median – the average monthly premium, for a small group in the State of New Hampshire, was 343. That's a difference of \$72 a month. Seventy-two dollars a month. Now, if we believe that insurance companies are going to write a plan and take a hit for \$72 a month and they're not going to distribute that cost somewhere ... because, as we've heard in this document, the administrative cost is much less than that on a per-monthly basis. So I'm looking at this and saying, if it's \$72 a month, that's somewhere in the vicinity of \$860 a year. This is a guaranteed issued plan; insurance companies can't decide whether they're going to do it or not, they must do it. And let's remember, the number is before – is a base rate before any adjustments for age or occupation, or group size. So we shouldn't be sending this false identity to small employers that insurance companies are going to produce a per-member, per-month health insurance plan at \$262 a month. Because that 262 for a person that's in that group, that may be absolutely healthy at 64, is not going to be 262 a month. It's a false impression that we're sending, it's not fair for the small employers to say: Oh, look at this, we're going to save an awful lot of money on health insurance 'cause there are going to be plans coming out at \$262 a month. That's not going to exist, that's not going to happen.

I guess my other question is – and I haven't been able to get anybody an answer, can't answer me – a group of five employees in a group, and let's assume for a second that the mandate is for insurance companies to reduce the rate to 262 a month, and today those five employees are healthy, and three of them, next year, have catastrophic illnesses. Are they still guaranteed a rate? Is that rate still guaranteed to them? Nobody can answer that question. Or do they go out and see a 40 or 50 or 60 percent increase, because everybody's saying: No, we aren't going to insure you with a 10 percent discount. That's the question. We have a bill before us that doesn't go into effect until October of 2009. It's amazing that another Legislature will be sitting in these seats, and we know, because I'm sure during the course of the day today we'll repeal some laws that other bodies have put before us. But it's clear that we're sending a false impression to small employers. For an employer to think that he's going to see a rate of 262 a month, unless he's 25 and healthy and there are four other 25-year-old healthy people in a profession that's not going to change their ability – they're not roofers, then maybe it does exist. But if you take the average premium as issued by the Insurance Department, of 343, and that again isn't for the adjustment for age or for group size or industry, that's not included. So I'm sure that people

would love to see a rate of 343 if we could produce it for them. But it's a false security blanket that we're sending a message on. Because anybody that's going to sit in this chamber and say, oh yeah, there are a lot of groups that are going to come in and get a 262 rate, let's not forget that they'll be calling next October when they don't see that rate and wonder why. My question is, who's the \$72 cost by the insurance company – or they're going to absorb it. Maybe they're going to absorb it and not pass it along to anybody. I'm sure that that's what we all believe, that they're going to take that \$72 a month and absorb it. Thank you, Madam President.

Sen. Gottesman moved the question.

Without objection, the Chair moved to close debate, recognizing Sen. Hassan as the final speaker.

SENATOR HASSAN: Thank you, Madam President. I just want to focus, again, on the importance of this bill. We have heard repeatedly from the business community, especially the small business community, of their need for this kind of help and what is groundbreaking in this kind of legislation is, in fact, that for the first time we are beginning to say that healthcare premiums cannot continue to go up at a much faster rate than wages, and we are putting the pressure on the carriers to look at cost containment and efficiencies with the way they manage healthcare costs, and we're asking consumers to do the same thing in concert with them. I think there is great promise in this legislation, it is what our constituents and small businesses have been asking for, and I think it addresses a number of problems right now where insurers have incentives to cost-shift by trying to get sick people out of their book of business and starts looking at cost containment and efficiency for carriers and consumers. Thank you.

(The Chair recognized Sen. Gatsas for a question of Sen. Hassan who declined to yield.)

(The Chair recognized Sen. Gatsas for a question of Sen. Sgambati.)

SENATOR GATSAS: Sen. Sgambati, would you believe that this isn't a new line of insurance, that the State of Rhode Island has this exact same plan that they put in in October. And would you believe that the State of Rhode Island has 30,000 small businesses. And to date, would you believe, that only 89 companies have joined, at the end of January, with 286 employers in this "cutting" insurance plan that we're looking before us. Would you believe that?

SENATOR SGAMBATI: I actually don't know that for a fact, I will take your word for it. It is a new plan, just barely unveiled in Rhode Island, and I would say that any life we can insure and any life we can add to the risk pool is important for coverage and is important for cost. Thank you.

SENATOR GATSAS: Thank you.

The question is on the adoption of Ought to Pass as Amended on SB 540-FN.

A roll call was requested by Sen. Gatsas, seconded by Sen. Foster.

The following Senators voted Yes: Gallus, Reynolds, Sgambati, Burling, Cilley, Janeway, Odell, Kelly, Bragdon, Gottesman, Foster, Clegg, Larsen, Barnes, DeVries, Letourneau, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.

The following Senators voted No: Kenney, Roberge, Gatsas.

Yeas: 21 - Nays: 3

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 482, relative to ethical standards for volunteer service in the executive branch. Election Law and Internal Affairs Committee. Ought to Pass, Vote 3-0. Senator Burling for the committee.

SENATOR BURLING: Thank you, Madam President. Madam President, I move Senate Bill 482 ought to pass. This bill prohibits volunteers in the Executive Branch from using their positions of access to deciders in the Executive Branch from obtaining and securing an economic benefit or advancing person or pecuniary interest. This issue has been around for a couple of years; we have struggled, largely in communication with the House, to find a simple, eloquent and understandable way of making this point. The Committee feels that this is the best effort yet. And I should also say the Committee has received a House bill that represents another significant effort on their part at expressing this restriction on volunteer service. The Election Law and Internal Affairs Committee asks for your support of Senate Bill 482. Thank you, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on SB 482.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 417, relative to changes to the shoreland protection act. Energy, Environment and Economic Development Committee. Ought to Pass with Amendment, Vote 4-0. Senator Fuller Clark for the committee.

Energy, Environment and Economic Development

March 11, 2008

2008-0967s

06/10

Amendment to SB 417

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraphs; Projects Exempt from Permit Requirement. Amend RSA 483-B:5-a by inserting after paragraph IV the following new paragraphs:

IV-a. Subject to paragraph IV-b, activities in the protected shoreland shall not require a permit under this section if:

(a) The activities are specifically identified in an application that has been the subject of notice by a planning board under RSA 676:4, I(d) or the zoning board of adjustment prior to July 1, 2007, regardless of whether an approval has been issued, provided that such application is ultimately approved by the municipal board or boards having authority over the activities covered by the application;

(b) The activities are specifically identified in a building permit application submitted to a municipality prior to July 1, 2007;

(c) A concrete foundation for the primary structure was installed as part of an active project prior to October 1, 2008.

(d) The activities are specifically identified in a variance or redevelopment waiver issued by the department prior to October 1, 2008 under RSA 483-B; unless the approval specifically requires the permittee to obtain a permit under this section if work was not commenced prior to October 1, 2008; or

(e) The activities were specifically approved in a permit issued under RSA 485-A:17 prior to October 1, 2008, unless the approval specifically requires the permittee to obtain a permit under this section if work was not commenced prior to October 1, 2008.

IV-b. An exemption shall not be available under paragraph IV-a if:

(a) The applicant proposes changes to the activities from those that would otherwise be exempt under paragraph IV-a, and such changes would increase impacts in the natural woodland buffer established by RSA 483-B:9, V(b)(1); or

(b) The applicable permit, approval, variance, or redevelopment waiver expires or otherwise lapses prior to the commencement of work, or is revoked for cause by the issuing authority.

2 Natural Woodland Buffer. Amend RSA 483-B:9, V(b)(2)(A) to read as follows:

(A) At least 50 percent of the area outside of *the waterfront buffer, exclusive of* impervious surfaces, shall be maintained in an undisturbed state. *No chemicals, including pesticides of any kind, except as allowed under special permit issued by the division of pesticide control under rules adopted by the pesticide control board under RSA 430:31, IV(b), or fertilizers of any kind except those specified in RSA 483-B:9, II(d), shall be applied.* Owners of lots legally developed prior to ~~April~~ **October** 1, 2008 that do not comply with this standard are encouraged to, but shall not be required to, increase the percentage of area maintained in an undisturbed state, except as required by the department under RSA 483-B:11, II. The percentage of area maintained in an undisturbed state on nonconforming lots shall not be decreased.

3 Effective Date. This act shall take effect April 1, 2008 at 12:01 a.m.
2008-0967s

AMENDED ANALYSIS

This bill adds certain exemptions from the permit requirements of the shoreland protection act.

MOTION TO TABLE

Sen. Fuller Clark moved to have SB 417 laid on the table.

Motion adopted.

LAIID ON THE TABLE

SB 417, relative to changes to the shoreland protection act.

SCR 10, urging the New Hampshire delegation to actively seek an increase in federal funding for wastewater treatment facility improvements. Energy, Environment and Economic Development Committee. Ought to Pass with Amendment, Vote 4-0. Senator Cilley for the committee.

Energy, Environment, and Economic Development

March 11, 2008

2008-0965s

06/09

Amendment to SCR 10

Amend the resolution by replacing the first paragraph after the resolving clause with the following:

That the state of New Hampshire hereby requests that the New Hampshire congressional delegation seek an increase in federal funding for wastewater treatment facility improvements such that the ratio of cost-

sharing will be apportioned to 60 percent federal, 30 percent state, and 10 percent local, consistent with grant programs available during the 1960's prior to the passage of the federal Clean Water Act; and

SENATOR CILLEY: Thank you, Madam President. I move that SCR 10 ought to pass with amendment. This Senate Concurrent Resolution urges that New Hampshire delegation to actively seek an increase in federal funding for wastewater treatment facility improvements. SCR 10 is the result of the 2007 HB 1491 commission to study the publicly-owned treatment plant needs of New Hampshire and state laboratory water tests and fees for such tests collected by the Department of Environmental Services. During the course of its work we discovered and determined that New Hampshire faces approximately \$1 billion over the next ten years in costs associated with upgrades to its wastewater treatment facilities to meet the needs imposed by growth and increasingly stringent treatment standards. The needs of replacement and refurbishment of this infrastructure is coming at the very time that funding sources, both at the federal level and the state level, have dried up considerably. The committee amendment addresses the request made by the Congressional delegation. The amendment changes the ratio of cost-sharing to 60 percent federal, 30 percent state, and 10 percent local funds, consistent with the grant programs available during the 1960's prior to the passage of the Clean Water Act. Without this assistance, there is a realistic danger of the entire cost of refurbishing and replacing wastewater treatment infrastructure that will be shouldered by local ratepayers, or worse, these infrastructure needs may go unmet or under-met. This would, without question, defeat the original intent of the Clean Water Act as it relates to wastewater treatment programs. Please join the Energy, Environment and Economic Development Committee and vote ought to pass on this important piece of legislation. Thank you.

**The question is on the adoption of Committee Amendment 0965s.
Committee Amendment 0965s adopted.**

The question is on the adoption of Ought to Pass as Amended on SCR 10.

Motion of Ought to Pass as Amended adopted; bill ordered to Third Reading.

SB 383, establishing a commission to develop a plan for the expansion of transmission capacity in the north country. Energy, Environment and Economic Development Committee. Ought to Pass with Amendment, Vote 4-0. Senator Fuller Clark for the committee.

**Energy, Environment and Economic Development
March 18, 2008
2008-1071s
06/09**

Amendment to SB 383

Amend the bill by replacing all after the enacting clause with the following:

1 Findings. The general court finds that:

I. In 2007, 354:1, the general court concluded that "it is in the public interest and to the benefit of New Hampshire to encourage the development of renewable energy" and that instrumental to such a goal the "existing transmission infrastructure, particularly in the northern part of the state, will need to be upgraded or replaced or new transmission facilities will need to be built."

II. It is in the public interest to avoid further delays caused by uncertainties in the ISO-NE Generator Interconnection Study Queue and cost responsibility for the design and construction of transmission facilities in the north country necessary to integrate new renewable resources into the electric grid.

III. It is in the public interest to take immediate steps to undertake appropriate technical and economic studies necessary to ensure the timely development of renewable energy generating projects in the north country.

IV. It is in the public interest, as well as in the economic interest of the region, and in the best interest of system reliability, for the public utilities commission to support regional efforts to address timely approvals of remote transmission facilities.

V. It may be in the public interest to move forward on a near-term basis with a New Hampshire-only transmission improvements plan in order to ensure the timely development of renewable energy generating projects in the north country.

2 Commission Established. There is established a commission to develop a plan for the expansion of transmission capacity in the north country.

3 Membership and Compensation.

I. The members of the commission shall be as follows:

(a) Two members of the senate, appointed by the president of the senate.

(b) Two members of the house of representatives, appointed by the speaker of the house of representatives.

(c) The director of the office of energy and planning, or designee.

(d) The commissioner of the department of resources and economic development, or designee.

(e) A commissioner of the public utilities commission, or designee.

(f) The governor, or designee.

(g) Three representatives of the north country, appointed by the governor.

II. The commission shall include as non-voting participants the following:

(a) A representative of active applications in the ISO-NE Generator Interconnection Study Queue, appointed by ISO-NE.

(b) A representative of the unregulated energy supply industry, appointed by that industry.

(c) A representative of the (FERC) Federal Energy Regulatory Commission or an individual with expertise in the area of federal electricity transmission regulation, appointed by that commission.

(d) A representative of Public Service of New Hampshire, appointed by that organization.

(e) A representative of National Grid Group, appointed by that organization.

(f) A representative from New England Power Generators Association, appointed by the association.

III. The commission shall seek input and participation ISO-NE.

IV. Legislative members of the commission shall receive mileage at the legislative rate when attending to the duties of the commission.

4 Duties. The commission:

I. Shall develop a proposal for the upgrade of the transmission system in the north country no later than December 1, 2008, with the support of the public utilities commission and a consensus of the state's electric distribution providers, electric transmission companies, the consumer ad-

vocate, the commission staff and developers of renewable energy projects who have active applications in the ISO-NE Generator Interconnection Study Queue as of the effective date of this act. Consideration in the development of such a plan shall be given to both a regional solution and, in the event that a regional solution is not recommended for the Coos Loop, a New Hampshire-only solution shall also be explored. As part of the proposal, the commission shall:

(a) Expedite the necessary studies required to achieve transmission expansion.

(b) Determine what the options, process, and timelines would be for pursuing a regional solution.

(c) Direct the public utilities commission, in conjunction with the formulation of the proposal, to seek a petition to FERC for approval for expansion, upgrades, and pooled transmission facility determination for the Coos Loop.

II. Is authorized to utilize the services of the public utilities commission and its staff, and to hire a consultant to facilitate the development of a plan, with the participation of interested parties, to facilitate the transmissions upgrade in the north country.

III. Is authorized to obtain the services of a consultant to complete any necessary engineering or economic studies to contribute to any such studies. The commission may spend up to \$200,000 for the purposes of this act. The commission is authorized to obtain grants and contributions for the purposes of this section, in accordance with RSA 4:8, and is authorized to spend up to \$100,000 from funds received pursuant to utility assessment under RSA 365:37, RSA 362-F:10, or both, for this purpose. The commission shall be exempt from the provisions of RSA 21-I concerning competitive bidding procedures for the purpose of obtaining a consultant or hiring an entity to complete a study as authorized by this section.

5 Chairperson; Quorum. The members of the commission shall elect a chairperson from among the members. The first meeting of the commission shall be called by the first-named senate member. The first meeting of the commission shall be held within 45 days of the effective date of this act. Seven members of the commission shall constitute a quorum. The commission shall meet monthly to receive updates from the public utilities commission on the progress that is being made and to provide input to the public utilities commission with regard to achieving the necessary transmission capacity expansion in a timely fashion.

6 Report. The commission shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before December 1, 2008.

7 Site Evaluation Committee; Review of Renewable Energy Projects. Amend RSA 162-H:4, V by inserting after subparagraph (b) the following new subparagraph:

(c) The committee shall give expedited public interest consideration to any project which is formally a party to any settlement agreement approved by the commission.

8 Effective Date. This act shall take effect upon its passage.

SENATOR FULLER CLARK: Thank you very much, Madam President. I move Senate Bill 383 ought to pass with amendment. This legislation as amended establishes a commission to develop a plan for the expansion of transmission capacity, including funding solutions in the North Country. The Committee believes that it is essential to address the concerns

surrounding the upgrades expanding or possible rebuilding of existing transmission infrastructure in the North Country in order to allow the state's commitment to renewable energy and economic development to move forward. In developing such a proposal the commission is directed to consider both a regional solution and a New Hampshire-only solution, should a regional solution appear to be impossible to achieve in a reasonable amount of time. The commission in this bill is also authorized to obtain grants and contributions for the purpose of spending up to \$200,000 to obtain the services of a consultant to complete any necessary engineering or economic studies. A hundred thousand dollars of that may be drawn from the Renewable Energy Compliance payments, or those moneys may be totally donated, but it will not impact on the General Fund. Would you please join the Energy, Environment and Economic Development Committee and vote ought to pass Senate Bill 383 with the amendment. And once we have taken that vote, Madam President, I do have an additional amendment which simply corrects and clarifies membership on the commission. Thank you.

**The question is on the adoption of Committee Amendment 1017s.
Committee Amendment 1071s adopted.**

Sen. Fuller Clark offered a floor amendment.

Sen. Fuller Clark, Dist. 24

March 19, 2008

2008-1087s

06/09

Floor Amendment to SB 383

Amend subparagraph II(a) of section 3 of the bill by replacing it with the following:

(a) Representatives of active applications in the ISO-NE Generator Interconnection Study Queue, one member appointed by U.S. Senator Judd Gregg, one member appointed by U.S. Senator John Sununu, one member appointed by U.S. Congressman Paul Hodes, and one member appointed by U.S. Congresswoman Carol Shea Porter.

SENATOR FULLER CLARK: Yes, Madam Chairman. An amendment is being passed out, 1087s, floor amendment to Senate Bill 383.

PRESIDENT LARSEN: You may be speaking to that as it's being distributed.

SENATOR FULLER CLARK: Why, thank you very much. It simply changes under (a), under the committee on subparagraph II(a) of section 3 of the bill, it changes "a representative" to "representatives of active applications in the ..." ISO-New England Generating Interconnection Queue. And it removes the language that they would be appointed by ISO-New England. They did not feel comfortable having the authority to appoint, and therefore suggested that we add any representative of active applications as part of the nonvoting committee members. And secondly, it adds one member appointed by the U.S. Senator Judd Gregg, one member appointed by U.S. Senator John Sununu, one member appointed by the U.S. Congressman Paul Hodes, and one member appointed by the U.S. Congresswoman Carol Shea-Porter. The reason for including representatives from the federal delegation is that in order to move the transmission issues forward, we may be needing to pursue changes in legislation at the federal level and also changes with the FERC process. So I wanted to bring those memberships into this commission.

(The Chair recognized Sen. Gatsas for a question of Sen. Fuller Clark.)

SENATOR GATSAS: Senator, your amendment spells out in law four people.

SENATOR FULLER CLARK: Yes.

SENATOR GATSAS: We have somebody in this chamber that's running for one of those positions, what if he succeeds?

SENATOR FULLER CLARK: Well, I did address that. This committee, this commission only exists until December 1st of 2008, so we would not be moving into the next election cycle. However, if you would like to amend that so it simply says one member from each of the Representatives and Senators, I'm happy to do that and not name them.

SENATOR GATSAS: It's your amendment, Senator, I would think that maybe you might want to put it on the table and do that.

SENATOR FULLER CLARK: Thank you.

The question is on the adoption of Floor Amendment 1087s.

(The Chair recognized Sen. Letourneau.)

SENATOR LETOURNEAU: A point of order. Do we normally put people's names in legislation like this? I was asking that question, and I didn't want to cause any embarrassing moments, but I don't recall seeing this in ten years.

PRESIDENT LARSEN: There are two ways to do it. You could identify it as the two Congressmen – our two Congressmen and our two Senators, or you could do it by name because, as it was pointed out, the term of office is completed before the election of new members or restoring of old members to our Congressional delegation, which would not take place till January. So I think, given in the interest of time, I think we can move on this floor amendment with the understanding that those named would appoint, those names –

SENATOR LETOURNEAU: Couldn't we just table this while we drafted up a new amendment and then take it back off the table, and do it that way?

MOTION TO TABLE

Sen. Barnes moved to have SB 383 laid on the table.

The question is on the motion to table.

A roll call was requested by Sen. Gatsas, seconded by Sen. Barnes.

The following Senators voted Yes: Gallus, Kenney, Odell, Roberge, Bragdon, Gottesman, Clegg, Gatsas, Barnes, Letourneau, Downing.

The following Senators voted No: Reynolds, Sgambati, Burling, Cilley, Janeway, Kelly, Foster, Larsen, DeVries, D'Allesandro, Estabrook, Hassan, Fuller Clark.

Yeas: 11 - Nays: 13

Motion failed.

The question is on the adoption of Floor Amendment 1087s.

(The Chair recognized Sen. Clegg to speak.)

SENATOR CLEGG: Thank you, Madam President. I'd like to thank my colleagues because I think they were interested, but I really don't mind having a former Congressman make those appointments. (Laughter)

The question is on the adoption of Floor Amendment 1087s.

Floor Amendment 1087s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 383.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 419, relative to the duties of the energy planning and advisory board and restructuring policy principles. Energy, Environment and Economic Development Committee. Ought to Pass with Amendment, Vote 3-0. Senator Odell for the committee.

Sen. Downing, Dist. 22

March 18, 2008

2008-1068s

06/09

Amendment to SB 419

Amend the bill by replacing section 1 with the following:

1 New Subparagraphs; Energy Planning and Advisory Board. Amend 2004, 164:2, III by inserting after subparagraph (b) the following new subparagraphs:

(c) The board shall oversee and coordinate with other boards and study committees whose duties include consideration of matters related to energy, including usage, planning, conservation, supply, environmental attributes, sale, distribution, transmission, or storage. If any disparities between such boards and study committees occur, the energy planning advisory board shall resolve such matters.

(d) The board shall review, beginning with the effective date of this section, the cumulative effects on the electric rates of New Hampshire residents and businesses of the passage of energy legislation, including but not limited to, the multiple pollutant reduction program under RSA 125-O and the renewable portfolio standard, related regional mandates that affect overall electric rates in New Hampshire such as the regional greenhouse gas initiative (RGGI), the forward capacity market and reliability-must-run requirements implemented through ISO New England Inc., and any additional energy or environmental regulatory requirements resulting from state, regional, or federal action that have the potential to affect electric rates.

(e) The board may work with the office of energy and planning and the public utilities commission to establish the qualifications requirements for applicants and to oversee uses of such funds and design the criteria for the use of energy efficiency funds from the multiple pollutant reduction program under RSA 125-O.

(f) The board shall monitor and collect data on the development of any administrative costs associated with the RGGI program, including fund oversight and distribution.

(g) The board shall monitor any federal action concerning renewable energy or controlling greenhouse gas emissions.

(h) The board shall chart and monitor consumer electricity costs on a yearly basis.

(i) The board shall provide a yearly report to the general court.

Amend the bill by deleting section 2 and renumbering the original sections 3 and 4 to read as 2 and 3, respectively.

SENATOR ODELL: Thank you, Madam President. I move Senate Bill 419 ought to pass with amendment. This legislation extends the duties of the

Energy Planning and Advisory Board and clarifies principles relative to renewable energy resources. Senate Bill 419 as amended by the Committee is intended to put the Energy Planning and Advisory Board in a position to provide leadership and guidance as we continue to address energy issues in New Hampshire. It is no secret to anyone here that we have a variety of committees and commissions all working on separate energy issues and suggesting legislation to address portions of New Hampshire's energy portfolio. I would ask my colleagues to pass the committee amendment and then to also support the amendment that will be brought forward by Sen. Cilley, and then pass the bill as amended. Thank you, Madam President.

**The question is on the adoption of Committee Amendment 1068s.
Committee Amendment 1068s adopted.**

Sen. Cilley offered a floor amendment.

**Sen. Cilley, Dist. 6
March 20, 2008
2008-1092s
06/04**

Floor Amendment to SB 419

Amend the bill by replacing section 1 with the following:

1 New Chapter; Energy Planning and Coordination. Amend RSA by inserting after chapter 374-F the following new chapter:

CHAPTER 374-G

ENERGY PLANNING AND COORDINATION

374-G:1 Energy Planning Advisory Board.

I. There is established an energy planning advisory board to monitor and assist in the implementation of the New Hampshire energy plan prepared by the governor's office of energy and community services pursuant to 2001, 121.

II.(a) The members of the committee shall be as follows:

- (1) The governor, or designee.
- (2) One member representing the office of energy and planning appointed by that office.
- (3) One member of the senate energy, environment, and economic development committee, appointed by the president of the senate.
- (4) One member of the house science, technology and energy committee, appointed by the speaker of the house of representatives.
- (5) Two members representing the public utilities commission, appointed by the chairman.
- (6) One member representing the department of administrative services, appointed by the commissioner.
- (7) One member representing the department of environmental services, appointed by the commissioner.
- (8) One member representing the university system of New Hampshire, appointed by the chancellor.
- (9) One member representing the department of transportation, appointed by the commissioner.
- (10) One member representing the department of resources and economic development, appointed by the commissioner.
- (11) The consumer advocate, or designee.
- (12) Two members of the business and industry community, appointed by the governor and council.
- (13) Two members of the public representing renewable energy and energy efficiency interests appointed by the governor and council.

(b) The legislative members of the committee shall serve for the duration of their legislative term, and shall receive mileage at the legislative rate when attending to the duties of the board. Public members of the board shall serve for 3 years and until a successor is appointed.

III. Duties.

(a) The primary duties of the board shall be to meet on a regular basis to discuss energy policy and planning at the state level and develop strategic planning for the state's energy policies that include, but shall not be limited to:

(1) Supply and demand for energy resources.
(2) Transmission and distribution infrastructure for electricity, natural gas, and other transportable energy.

(3) Fuel diversity within the state and region.

(4) Supporting the department of transportation's planning efforts.

(5) Deliverable fuels.

(6) Energy efficiency and conservation opportunities.

(7) The state's role as a major energy consumer.

(8) The environmental effects of energy generation, transmission, and distribution.

(9) New Hampshire's role in regional energy issues.

(10) Periodic revision and update of the New Hampshire energy plan for currency as circumstances change.

(11) The board may consult and participate with members and groups of the business and residential communities within the state that may have important perspectives on energy planning.

IV. The members of the board shall elect a chairperson from among the members.

V. The board shall coordinate with other boards and study committees whose duties include consideration of matters related to energy, including usage, planning, conservation, supply, environmental attributes, sale, distribution, transmission, or storage. If any disparities between such boards and study committees occur, the energy planning advisory board shall report such matters to the legislature in its annual report, with recommendations for resolution as appropriate.

VI. The board shall review, in coordination with the public utilities commission, beginning with the effective date of this chapter, the cumulative effects on the electric rates of New Hampshire residents and businesses of the passage of energy legislation, including but not limited to, the multiple pollutant reduction program under RSA 125-O and the renewable portfolio standard, related regional mandates that affect overall electric rates in New Hampshire such as the regional greenhouse gas initiative (RGGI), the forward capacity market and reliability-must-run requirements implemented through ISO New England Inc., and any additional energy or environmental regulatory requirements resulting from state, regional, or federal action that have the potential to affect electric rates.

VII. The board shall monitor any federal action concerning renewable energy or controlling greenhouse gas emissions.

VIII. The board, in coordination with the public utilities commission, shall chart and monitor consumer electricity costs on a yearly basis.

IX. The board shall report annually to the governor, the speaker of the house of representatives and the president of the senate.

SENATOR CILLEY: Thank you, Madam President. I would like to bring forward Floor Amendment 2008-1092s, and may I speak to that as it gets distributed?

PRESIDENT LARSEN: You may speak to that floor amendment as it's distributed.

SENATOR CILLEY: Okay. Senate Bill 419, the Committee agreed, is conceptually a very sound bill and it's good policy for the State of New Hampshire in terms of having oversight over the six to eight committees and commissions that have to do with energy policy in the State of New Hampshire. However, there are committees, commissions, most especially the one related to RGGI, that has oversight power. There was concern by Committee members that the bill as it originally was proposed, along with the amendment, duplicated certain responsibilities and made very unclear who had the final say in, you know, in what could happen. So with the assistance of the Office of the Consumer Advocate, the Amendment 1092s has deleted references to RGGI; it has changed some language, such as on ... and of course I should have flagged that ... that rather than providing the authority to make the final decision, that this advisory committee would do a report and make recommendations to the Legislature, I think was perhaps one of the most salient aspects of the amendment. So with that, I would ask my colleagues to support this amendment as a component of the original bill. Thank you.

The question is on the adoption of Floor Amendment 1092s.

Floor Amendment 1092s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 419.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 451, authorizing rate recovery for electric public utilities investments in distributed energy resources. Energy, Environment and Economic Development Committee. Ought to Pass with Amendment, Vote 4-1. Senator Fuller Clark for the committee.

Energy, Environment and Economic Development

March 18, 2008

2008-1072s

09/03

Amendment to SB 451

Amend the bill by replacing all after the enacting clause with the following:

1 New Chapter; Electric Utility Investment in Distributed Energy Resources. Amend RSA by inserting after chapter 374-F the following new chapter:

CHAPTER 374-G

ELECTRIC UTILITY INVESTMENT IN DISTRIBUTED ENERGY RESOURCES

374-G:1 Purpose. Distributed energy resources can increase overall energy efficiency and provide energy diversity by eliminating, displacing, or better managing energy deliveries from the centralized bulk power grid, in keeping with the objectives of RSA 362-F:1. It is therefore in the public interest to stimulate investment in distributed energy resources in New Hampshire by encouraging New Hampshire electric public utilities to invest in distributed energy resources benefiting the transmission and distribution system under state regulatory oversight.

374-G:2 Definitions. In this chapter:

I. "Commission" means the public utilities commission.

II. "Distributed energy resources" means electric generation, energy storage, demand response, load reduction or control programs, and technologies or devices located on or inter-connected to the local electric distribution system for purposes including but not limited to reducing line losses, supporting voltage regulation, or peak load shaving, as part of a strategy for minimizing transmission and distribution costs as provided in RSA 374-F:3. III. Distributed energy resources shall exclude generation projects in excess of 5 megawatts and generation projects intended to produce electric energy primarily for retail. In addition, any biomass-fueled generation project shall meet the emission requirements for eligible biomass technology under RSA 362-F:2, VIII and any fossil fueled generation project must meet the following emission standards (in lbs/MW-H): NO_x - 0.07; CO - 0.10; VOCs - 0.02. If a fossil fueled generation project produces combined heat and power, a credit to meet the emission standard may be applied at the rate of one MW-H for each 3.4 million BTUs of heat recovered, as long as such units achieve a minimum energy efficiency of 60 percent, measured as usable thermal and electrical output in BTUs divided by fuel input in BTUs, and are installed as integrated combined heat and power applications.

374-G:3 Investments in Distributed Energy Resources. Notwithstanding any other provision of law to the contrary, as provided in RSA 374-G:4, a New Hampshire electric public utility may invest in or own distributed energy resources, located on the premises of a retail customer of the electric public utility. Distributed electric generation owned by or receiving investments from an electric utility under this section shall be limited to a cumulative maximum in megawatts of 12-1/2 percent of the utility's total distribution peak load in megawatts.

374-G:4 Rate Filing; Authorization.

I. A New Hampshire electric public utility may engage in a distributed energy resources program and may seek rate recovery for its investments in distributed energy resources from the commission by making an appropriate rate filing. Such filing shall include a detailed description and economic evaluation of the proposed investment and a discussion of the benefits of the proposal with specific reference to the factors listed in paragraph II. In addition, the utility shall describe any equipment or installation specifications, solicitations, and procurements it has or intends to implement and show that it has made reasonable efforts to involve local businesses in its program. The utility shall also provide evidence of compliance with any applicable emission limitations.

II. Prior to authorizing a utility's recovery of investments made in distributed energy resources, the commission shall determine that the utility's investment and its recovery in rates, as proposed, are in the public interest. Determination of the public interest under this section shall include but not be limited to consideration and balancing of the following factors:

(a) Whether the expected value of the economic benefits of the investment to the company's ratepayers over the life of the investment outweigh the economic costs to the company's ratepayers.

(b) The efficient and cost-effective realization of the purposes of RSA 362-F and the restructuring policy principles of RSA 374-F:3.

(c) The costs and benefits to any participating customer or customers.

(d) The energy security benefits of the investment to the state of New Hampshire.

(e) The environmental benefits of the investment to the state of New Hampshire.

(f) The economic development benefits and liabilities of the investment to the state of New Hampshire.

(g) The effect on the reliability, safety, and efficiency of electric service.

(h) The potential benefits and liabilities of the program to the state of New Hampshire.

(i) The effect on competition within the region's electricity markets and the state's energy services market.

III. Authorized and prudently incurred investments shall be recovered under this section in a utility's base distribution rates as a component of rate base, and cost recovery shall include the recovery of depreciation, a return on investment, taxes, and other operating and maintenance expenses directly associated with the investment, net of any revenues received by the utility directly attributable to the investment.

IV. The rate of return applied to investments authorized under this section shall be based on the utilities' most recent rate of return established by the commission. The commission shall add an incentive to the return on equity component of 25 to 100 basis points as it deems appropriate to encourage sufficient and timely investments in an approved distributed energy resource program.

V. The commission shall approve, disapprove, or approve with conditions a utility rate filing under this section within 90 days of its filing. The commission may extend this deadline to 6 months at its discretion for any filing involving an investment in excess of \$1,000,000. The commission may also extend the deadline at its discretion for failure of the applicant to respond to data requests on an expedited timeline.

374-G:5 Exemption; Rural Electric Cooperatives. The requirements for commission authorization under RSA 374-G:4 shall not apply to rural electric cooperatives for which a certificate of deregulation is on file with the commission.

374-G:6 Exclusion. Any renewable generating project funded in part by a distribution utility pursuant to this chapter shall not be included in the calculation of the total rated generating capacity under RSA 362-A:9, I for purposes of limiting net metered renewable generating projects.

2 Electric Utility Investment in distributed Energy Resources; Report. The public utilities commission shall prepare a report reviewing and evaluating utility distributed energy resources projects proposed and implemented under RSA 374-G, to be filed on November 1, 2013, with the governor, the president of the senate, the speaker of the house of representatives, and the chairmen of the house science technology, and energy committee and the senate energy, environment, and economic development committee. The report shall include any recommended changes to RSA 374-G.

3 Effective Date. This act shall take effect 60 days after its passage.

MOTION TO TABLE

Sen. Fuller Clark moved to have SB 451 laid on the table.

Motion adopted.

LAIID ON THE TABLE

SB 451, authorizing rate recovery for electric public utilities investments in distributed energy resources.

SB 523, relative to requirements for the estuary alliance for sewage treatment to take and hold land. Energy, Environment and Economic Development Committee. Ought to Pass, Vote 3-0. Senator Fuller Clark for the committee.

SENATOR FULLER CLARK: Thank you very much, Madam President. I move Senate Bill 523 ought to pass. This bill requires that land taken and held by the Estuary Alliance for Sewage Treatment to be within boundaries of municipalities that are members of the Alliance. Under the current law the Estuary Alliance for Sewage Treatment has eminent domain authority over all municipalities, whether they choose to be members of the Alliance or not. This legislation will require that towns knowingly join EAST before they become subject to EAST eminent domain authority. Please join the Energy, Environment and Economic Development Committee and vote ought to pass. Thank you very much, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on SB 523.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 1151, relative to reporting dates for the instream flow pilot program. Energy, Environment and Economic Development Committee. Ought to Pass with Amendment, Vote 6-0. Senator Fuller Clark for the committee.

Sen. Fuller Clark, Dist. 24

March 18, 2008

2008-1057s

06/09

Amendment to HB 1151

Amend the bill by replacing all after section 3 with the following:

4 Change in Effective Date. Amend RSA 2007, 267:15, IV to read as follows:

IV. The remainder of this act shall take effect [~~April~~] **July 1, 2008.**

5 Repeal. The following are repealed:

I. 2007, 267:13, relative to a contingency.

II. 2007, 267:15, II and III, relative to effective dates.

6 Effective Date.

I. Sections 4 and 5 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect 60 days after its passage.

SPECIAL ORDER

Sen. Fuller Clark requested SB 1151 be special-ordered to next session's Calendar.

President Larsen moved, without objection, that HB 1151 be Special-Ordered to the Session on March 27.

HB 1151, relative to reporting dates for the instream flow pilot program.

MOTION TO REMOVE FROM THE TABLE

Sen. Sgambati moved to have SB 384 removed from the table.

Motion adopted.

SB 384, relative to the repair of septic systems prior to the sale of waterfront property.

The question is on Committee Amendment 0798s.

Sen. Sgambati, Dist. 4
March 3, 2008
2008-0798s
08/09

Amendment to SB 384

Amend the bill by replacing all after the enacting clause with the following:

1 Sale of Waterfront Property; Department Notification. Amend RSA 485-A:39 to read as follows:

485-A:39 Waterfront Property Sale; Site Assessment Study.

I. Prior to the execution of a purchase and sale agreement for any developed waterfront property using a septic disposal system, the owner of the property shall, at ~~[his or her]~~ **the owner's** expense, engage a permitted subsurface sewer or waste disposal system designer to perform a site assessment study to determine if the site meets the current standards for septic disposal systems established by the department. The site assessment study shall include an on-site inspection **and shall identify any remedial action required to meet the department's current standards for septic disposal systems and if the system is failing, the action necessary to bring the system into compliance.** If the site assessment is not complete prior to the time that the buyer and seller enter into a purchase and sale contract, the contract shall be subject to the buyer's acceptance of the completed site assessment.

II. The site assessment study form shall become a part of the purchase and sale agreement.

III. The site assessment study form, with stated findings, shall be given to the buyer **and the seller** and receipt of the form shall be acknowledged in writing by the buyer **and the seller**.

IV. Failure of the seller or the seller's agent to notify the buyer of the findings or deliver ~~[approved plans of the septic disposal system]~~ **the completed site assessment study form** pursuant to paragraph III of this section shall be a violation and, notwithstanding RSA 651:2, shall be punishable by a fine not to exceed \$500.

V. The site assessment study shall consist of 3 sections:

(a) Section A shall include the name, address, and telephone number of the seller and the seller's agent and the location and a brief description of the property, including the tax map reference and lot number.

(b) Section B shall include the lot size, slope, loading (based on the number of bedrooms in the structure), water source, soil type, and estimated seasonal high water table information from U.S. Natural Resources Conservation Service maps. A space shall be included on the form for the permitted designer to write his assessment of the site for the current use of the system, based upon the criteria and information required in this subparagraph.

(c) Section C shall include information about the present septic disposal system, if available. If the installed system was approved by the department, a copy of the approval form, approval number and plan shall be attached to the site assessment study.

~~[An assessment indicating that the site fails to meet any of the criteria established under this section shall not prohibit the sale of the property but must be disclosed to the buyer as full and proper notice of the possible limitations of the site for a septic disposal system.]~~

VI. The department shall design the site assessment form pursuant to paragraph V of this section. The commissioner shall adopt rules pursuant to RSA 541-A relative to the procedures for the availability and distribution of the form to interested parties.

VII. An assessment indicating that the site fails to meet any of the criteria established under this section shall not prohibit the sale of the property but shall be disclosed to the buyer as full and proper notice of the possible limitations of the site for a septic disposal system.

VIII. If the septic disposal system designer, during the course of a site assessment, discovers evidence that a system is in failure, the designer shall notify, in writing, the department and the local health officer, and shall include that information in the site assessment report.

IX. If no state-approved plan exists for the property, or the approved plan cannot be located, the assessor shall perform a standard dye test on the septic disposal system. Surfacing of the dye on the ground or in nearby surface waters shall be an indication of failure, and the assessor shall report that failure as provided in paragraph VIII.

2 Septic System Failure; Definition. Amend RSA 485-A:2, IV to read as follows:

IV. "Failure" means the condition produced when a subsurface sewage or waste disposal system does not properly contain ~~or treat~~ sewage or causes ~~or threatens to cause~~ the discharge of sewage on the ground surface or into adjacent surface ~~or groundwaters~~ **waters**.

3 Developed Waterfront Property; Definition. Amend RSA 485-A:2, I to read as follows:

I. "Developed waterfront property" means any parcel of land which is contiguous to or within 200 feet of ~~tidal waters or a great pond~~ **public waters** as defined in ~~RSA 4:40-a~~ **RSA 483-B** and upon which stands a structure suitable for either seasonal or year-round human occupancy.

4 Permit Renewal; Septic Designers. Amend RSA 485-A:35, I to read as follows:

I.(a) All applications, plans, and specifications submitted in accordance with this chapter for subsurface sewage or waste disposal systems shall be prepared and signed by the person who is directly responsible for them and who has a permit issued by the department to perform the work. The department shall issue a permit to any person who applies to the department, and pays a fee of ~~[\$40]~~ **\$80** and who has demonstrated a sound working knowledge of the procedures and practices required in the site evaluation, design, and operation of subsurface sewage or waste disposal systems. The department shall require an oral or written examination or both to determine who may qualify for a permit. Permits shall be issued from January 1 and shall expire December 31 of ~~[each]~~ **every other** year. Permits shall be renewable upon proper application, ~~[and payment of an annual fee of \$40]~~ **payment of a biennial fee of \$80, and documentation of compliance with the continuing education requirement of subparagraph (b).** A permit issued to any person may be suspended, revoked or not renewed only for just cause and after the permit holder has had a full opportunity to be heard by the department. An appeal from a decision to revoke, suspend or not renew a permit may be taken pursuant to RSA 541.

(b) Permitted designers shall complete a minimum of 3 hours annually of continuing education approved by the department.

5 Permit Renewal; Septic Installers. Amend RSA 485-A:36, I to read as follows:

I.(a) No person shall engage in the business of installing subsurface sewage or waste disposal systems under this subdivision without first obtaining an installer's permit from the department. The permit holder

shall be responsible for installing the subsurface sewage or waste disposal system in accordance with the intent of the approved plan. The department shall issue an installer's permit to any person who submits an application provided by the department, pays a fee of [~~\$40~~] **\$80** and demonstrates a sound working knowledge of RSA 485-A:29-35 and the ability to read approved waste disposal plans. The department shall require an oral or written examination or both to determine who may qualify for an installer's permit. Individuals who have been actively engaged in the business of installing systems for at least 12 months prior to January 1, 1980, shall not be required to submit to such examination, but shall be issued a permit upon filing an application and paying the initial fee, if application is made before June 30, 1980. Permits shall be issued from January 1 and shall expire December 31 of [~~each~~] **every other** year. Permits shall be renewable upon proper application [~~and payment of an annual fee of \$40~~] **payment of a biennial fee of \$80, and documentation of compliance with the continuing education requirement of subparagraph (b)**. The installer's permit may be suspended, revoked or not renewed for just cause, including, but not limited to, the installation of waste disposal systems in violation of this subdivision or the refusal by a permit holder to correct defective work. The department shall not suspend, revoke or refuse to renew a permit except for just cause until the permit holder has had an opportunity to be heard by the department. An appeal from such decision to revoke, suspend or not renew a permit may be taken pursuant to RSA 21-O:14. All fees shall be deposited with the state treasurer as unrestricted revenue.

(b) Permitted installers shall complete a minimum of 3 hours annually of continuing education approved by the department.

6 Effective Date. This act shall take effect January 1, 2009.

2008-0798s

AMENDED ANALYSIS

This bill:

I. Requires a site assessment study to identify remedial actions necessary.

II. Adds a section to the site assessment study.

III. Requires a septic disposal system designer to report remedial actions to the department of environmental services and the local health officer.

IV. Defines "developed waterfront property" and septic system "failure."

V. Prescribes continuing education requirements for septic system designers and installers.

(The Chair recognized Sen. Sgambati to speak.)

SENATOR SGAMBATI: The floor amendment that you're receiving – the bill is relative to septic systems and inspections on waterfront property. The floor amendment that you're receiving makes two changes from the committee amendment. The first removes language that was unintentionally left in. The second change is important in that the committee amendment added fourth-order streams to this provision for site inspection and reporting, and reporting to consumers. It was felt that this additional reporting may be too onerous for Environmental Services all at once, and because it's a new requirement for lakes and estuaries as well. So we have delayed in the floor amendment the implementation of the rivers section of the bill until 2011 by two years. That two years

allows more training of site inspectors and the additional analysis of any problems that may come up in the course of the implementation of the lakes and rivers program. So I would ask that we move the floor amendment as ought to pass, and reject the committee amendment. The floor amendment replaces the full text of the bill. Thank you, Madam President.

PARLIAMENTARY INQUIRY

SENATOR BURLING: Parliamentary inquiry, if I may, Madam President. Just to be clear in my own mind, the bill comes off the table with a committee amendment attached to it?

PRESIDENT LARSEN: That is correct.

SENATOR BURLING: If I wanted to adopt the floor amendment offered by my colleague, would I now vote down the committee amendment and then vote yes on the floor amendment that she's just offered?

PRESIDENT LARSEN: If you wish to remove the committee amendment, you would vote no on the following vote so that would permit a vote on the floor amendment.

The question is on the adoption of Committee Amendment 0798s. Committee Amendment 0798s failed.

(The Chair recognized Sen. Gallus for a question of Sen. Sgambati.)

SENATOR GALLUS: I'm just curious. There's already a site assessment in place, in law, for waterfront properties. My question is, I've been in the real-estate business for over 30 years; I haven't seen this to be a major problem, and we deal with an awful lot of waterfront properties. There are septic failures in all areas.

SENATOR SGAMBATI: Right.

SENATOR GALLUS: But I don't see the kind of numbers that, you know, we have to rush to do this particular type of legislation. Can you give me an idea of how many numbers of – I mean, what's the failure rate that this is a major problem with?

SENATOR SGAMBATI: I can't give you a number. I can tell you the Lakes Association, the Rivers Association, the Realtors and the Department of Environmental Services worked on defining exactly what "failure" was. So that definition is added, along with training for site inspectors. And the requirement also adds that not only the buyer is notified, but the seller is notified of any potential failure system [sic], and it lays out the procedures for determining failure. So I think that it's a very important move forward, because there are clearly – I actually agree with you, I think in the case of lakefront property, that upon transfer it's usually an expensive piece of property and people are pretty careful about repairing septic systems or replacing them. The issue for rivers, aging septic systems or failing septic systems make all of our ponds and rivers and lakes vulnerable, so we felt it was important to move forward on the site assessments.

SENATOR GALLUS: Thank you, Senator.

PRESIDENT LARSEN: There has been a floor amendment proposed which is Floor Amendment 798. Is there any further discussion on Floor Amendment 798?

(The Chair recognized Sen. Gatsas for a question of Sen. Sgambati.)

SENATOR GATSAS: Sen. Sgambati, can you tell me what the difference between a septic inspection and an invasive septic inspection is?

SENATOR SGAMBATI: I am not an expert in this field. This language was brought forward and agreed to by the parties that I had talked with before. Perhaps Sen. Gallus can answer your question.

(The Chair recognized Sen. Gallus for a response to Sen. Gatsas' inquiry.)

SENATOR GALLUS: I would think what they're referring to, basically, is an inspection of the tank for a dye test or some type of thing where – in most cases when somebody's purchasing, you know, expensive waterfront property, they're usually doing as part of the inspection process, you know, a check of the septic system. I will tell you that I think that ... at any time, if there's a problem with a septic system and you're in your yard in the middle of the summer, you know you have a problem and you're remedying that problem. I do not see this as an overwhelming problem; I see this as another, adding-on another bureaucratic stumbling block that we have to jump through hoops for.

SENATOR GATSAS: Follow-up? Sen. Gallus, follow-up, if I may. What happens if you are trying to sell your property in February and it's been closed down, is there any way that you can do an invasive septic inspection at that time? Or is anything going to show up?

SENATOR GALLUS: Nothing's going to show up, number one, if the property's been shut down and the system hasn't been utilized for a while. That's why I say you want to go back in July. If you're doing it in the middle of the winter, you can check the tank. But let's be honest – you know, we've done it this winter, I think we did one of them – first of all, it's tough to find someone to dig the tank up, because you need four guys with a backhoe and dig up all the snow and dig up frozen earth, and it's a costly procedure. But we did one this winter up north. And basically what you're going to find, if the property isn't occupied, nothing in the tank, or the tank's relatively low. You want to be there in the summertime, and I'll tell you what the secret is, is basically you don't need that invasive test; what you need is a long stick, and you walk around on top of the leach field, pushing the stick into the ground, and then you whiff the stick and if you have any strange odor there, you certainly have a problem, a real serious problem with your system. And I've seen some experts do it that way, so it's kind of an inexpensive way to do it, but you know right away if you have a problem, if just under the surface you have some type of a contaminant.

SENATOR GATSAS: Thank you, Senator.

**The question is on the adoption of Floor Amendment 0798s [sic].
Floor Amendment 0798s [sic] adopted.**

**The question is on the adoption of Ought to Pass as Amended
on SB 384.**

Roll call requested by Sen. Gallus.

Recess/Out of Recess.

Request for roll call withdrawn.

MOTION OF RECONSIDERATION

Sen. Sgambati, having voted with the prevailing side, moved reconsideration of SB 384, the Committee Amendment 0798s having erroneously been previously voted on twice, the second time being mistaken for Floor Amendment 1091s.

Motion adopted.

SB 384, relative to the repair of septic systems prior to the sale of waterfront property.

Sen. Sgambati offered a floor amendment.

Sen. Sgambati, Dist. 4

March 19, 2008

2008-1091s

08/10

Floor Amendment to SB 384

Amend the bill by replacing all after the enacting clause with the following:

1 Sale of Waterfront Property; Department Notification. Amend RSA 485-A:39 to read as follows:

485-A:39 Waterfront Property Sale; Site Assessment Study.

I. Prior to the execution of a purchase and sale agreement for any developed waterfront property using a septic disposal system, the owner of the property shall, at ~~[his or her]~~ **the owner's** expense, engage a permitted subsurface sewer or waste disposal system designer to perform a site assessment study to determine if the site meets the current standards for septic disposal systems established by the department. The site assessment study shall include an on-site inspection. If the site assessment is not complete prior to the time that the buyer and seller enter into a purchase and sale contract, the contract shall be subject to the buyer's acceptance of the completed site assessment.

II. The site assessment study form shall become a part of the purchase and sale agreement.

III. The site assessment study form, with stated findings, shall be given to the buyer **and the seller** and receipt of the form shall be acknowledged in writing by the buyer **and the seller**.

IV. Failure of the seller or the seller's agent to notify the buyer of the findings or deliver ~~[approved plans of the septic disposal system]~~ **the completed site assessment study form** pursuant to paragraph III of this section shall be a violation and, notwithstanding RSA 651:2, shall be punishable by a fine not to exceed \$500.

V. The site assessment study shall consist of 3 sections:

(a) Section A shall include the name, address, and telephone number of the seller and the seller's agent and the location and a brief description of the property, including the tax map reference and lot number.

(b) Section B shall include the lot size, slope, loading (based on the number of bedrooms in the structure), water source, soil type, and estimated seasonal high water table information from U.S. Natural Resources Conservation Service maps. A space shall be included on the form for the permitted designer to write his assessment of the site for the current use of the system, based upon the criteria and information required in this subparagraph.

(c) Section C shall include information about the present septic disposal system, if available. If the installed system was approved by the department, a copy of the approval form, approval number and plan shall be attached to the site assessment study.

[An assessment indicating that the site fails to meet any of the criteria established under this section shall not prohibit the sale of the property but must be disclosed to the buyer as full and proper notice of the possible limitations of the site for a septic disposal system.]

VI. The department shall design the site assessment form pursuant to paragraph V of this section. The commissioner shall adopt rules pursuant to RSA 541-A relative to the procedures for the availability and distribution of the form to interested parties.

VII. An assessment indicating that the site fails to meet any of the criteria established under this section shall not prohibit the sale of the property but shall be disclosed to the buyer as full and proper notice of the possible limitations of the site for a septic disposal system.

VIII. If the septic disposal system designer, during the course of a site assessment, discovers evidence that a system is in failure, the designer shall notify, in writing, the department and the local health officer, and shall include that information in the site assessment report.

IX. If no state-approved plan exists for the property, or the approved plan cannot be located, the assessor shall perform a standard dye test on the septic disposal system. Surfacing of the dye on the ground or in nearby surface waters shall be an indication of failure, and the assessor shall report that failure as provided in paragraph VIII.

2 Septic System Failure; Definition. Amend RSA 485-A:2, IV to read as follows:

IV. "Failure" means the condition produced when a subsurface sewage or waste disposal system does not properly contain ~~or treat~~ sewage or causes ~~or threatens to cause~~ the discharge of sewage on the ground surface or into adjacent surface ~~or groundwaters~~ **waters**.

3 Developed Waterfront Property; Definition. Amend RSA 485-A:2, I to read as follows:

I. "Developed waterfront property" means any parcel of land which is contiguous to or within 200 feet of tidal waters **as defined in RSA 483-B:4, XVI** or a great pond as defined in RSA 4:40-a upon which stands a structure suitable for either seasonal or year-round human occupancy; **or (b) rivers as defined in RSA 483-B:4, XVI(c) and upon which stands a structure suitable for either seasonal or year-round human occupancy.**

4 Permit Renewal; Septic Designers. Amend RSA 485-A:35, I to read as follows:

I.(a) All applications, plans, and specifications submitted in accordance with this chapter for subsurface sewage or waste disposal systems shall be prepared and signed by the person who is directly responsible for them and who has a permit issued by the department to perform the work. The department shall issue a permit to any person who applies to the department, and pays a fee of ~~[\$40]~~ **\$80** and who has demonstrated a sound working knowledge of the procedures and practices required in the site evaluation, design, and operation of subsurface sewage or waste disposal systems. The department shall require an oral or written examination or both to determine who may qualify for a permit. Permits shall be issued from January 1 and shall expire December 31 of ~~[each]~~ **every other** year. Permits shall be renewable upon proper application, ~~[and payment of an annual fee of \$40]~~ **payment of a biennial fee of \$80, and documentation of compliance with the continuing education**

requirement of subparagraph (b). A permit issued to any person may be suspended, revoked or not renewed only for just cause and after the permit holder has had a full opportunity to be heard by the department. An appeal from a decision to revoke, suspend or not renew a permit may be taken pursuant to RSA 541.

(b) Permitted designers shall complete a minimum of 3 hours annually of continuing education approved by the department.

5 Permit Renewal; Septic Installers. Amend RSA 485-A:36, I to read as follows:

I. **(a)** No person shall engage in the business of installing subsurface sewage or waste disposal systems under this subdivision without first obtaining an installer's permit from the department. The permit holder shall be responsible for installing the subsurface sewage or waste disposal system in accordance with the intent of the approved plan. The department shall issue an installer's permit to any person who submits an application provided by the department, pays a fee of ~~[\$40]~~ **\$80** and demonstrates a sound working knowledge of RSA 485-A:29-35 and the ability to read approved waste disposal plans. The department shall require an oral or written examination or both to determine who may qualify for an installer's permit. Individuals who have been actively engaged in the business of installing systems for at least 12 months prior to January 1, 1980, shall not be required to submit to such examination, but shall be issued a permit upon filing an application and paying the initial fee, if application is made before June 30, 1980. Permits shall be issued from January 1 and shall expire December 31 of ~~[each]~~ **every other** year. Permits shall be renewable upon proper application ~~[and payment of an annual fee of \$40]~~ **payment of a biennial fee of \$80, and documentation of compliance with the continuing education requirement of subparagraph (b).** The installer's permit may be suspended, revoked or not renewed for just cause, including, but not limited to, the installation of waste disposal systems in violation of this subdivision or the refusal by a permit holder to correct defective work. The department shall not suspend, revoke or refuse to renew a permit except for just cause until the permit holder has had an opportunity to be heard by the department. An appeal from such decision to revoke, suspend or not renew a permit may be taken pursuant to RSA 21-O:14. All fees shall be deposited with the state treasurer as unrestricted revenue.

(b) Permitted installers shall complete a minimum of 3 hours annually of continuing education approved by the department.

6 Effective Date.

I. RSA 485-A:2, I(b) as inserted by section 3 of this act shall take effect January 1, 2011.

II. The remainder of this act shall take effect January 1, 2009.

2008-1091s

AMENDED ANALYSIS

This bill:

- I. Adds a section to the site assessment study.
- II. Requires a septic disposal system designer to report remedial actions to the department of environmental services and the local health officer.
- III. Defines "developed waterfront property" and septic system "failure."
- IV. Prescribes continuing education requirements for septic system designers and installers.

SENATOR SGAMBATI: Thank you, Madam President. I would like to introduce Floor Amendment 1091s. This was actually the amendment that I was speaking to.

PRESIDENT LARSEN: You may be speaking as it's being distributed.

SENATOR SGAMBATI: Okay. And this time we have the correct amendment. The most significant change in this is that it delays the implementation of the rivers portion of the bill for two years. Without this amendment, that would go into effect immediately, based on the committee amendment. So I ask for your support of this Floor Amendment 1091s.

PARLIAMENTARY INQUIRY

SENATOR FOSTER: Madam President, I'm just uncertain of the parliamentary circumstance. We had moved to reconsider. Does the previous amendment that we voted in has now been withdrawn, or returned; is that what the reconsideration does do?

PRESIDENT LARSEN: The vote was reconsider. The question was –

SENATOR FOSTER: Has the amendment been withdrawn?

PRESIDENT LARSEN: – to reconsider the vote by which we adopted a floor amendment, and that was reconsidered, and that withdraws that and allows for additional consideration of a floor amendment.

SENATOR FOSTER: Thank you.

PRESIDENT LARSEN: We are on Floor Amendment 1091 which has been proposed.

(The Chair recognized Sen. Gatsas for a question of Sen. Sgambati.)

SENATOR GATSAS: Senator, can you tell me exactly the difference between the one that we reconsidered?

SENATOR SGAMBATI: Yes, I can tell you on page three at the bottom in 0798, the effective date is January 1, 2009; on page three of 1091, which is the one we're considering right now, there are two different effective dates: the January 1st, 2011 applies to the rivers; the January 1, 2009 applies to lakes, estuaries and other bodies of water.

SENATOR GATSAS: Thank you.

The question is on the adoption of Floor Amendment 1091s

Floor Amendment 1091s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 384.

A roll call was requested by Sen. Gallus, seconded by Sen. Bragdon.

Recess/Out of Recess.

The question is on the adoption of Ought to Pass as Amended on SB 384.

The following Senators voted Yes: Reynolds, Sgambati, Burling, Cilley, Janeway, Odell, Roberge, Kelly, Bragdon, Gottesman, Foster, Larsen, DeVries, D'Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Kenney, Clegg, Gatsas, Barnes, Letourneau, Downing.

Yeas: 17 - Nays: 7

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

Sen. Letourneau is in opposition to SB 384.

MOTION TO REMOVE FROM THE TABLE

Sen. Reynolds moved to have SB 412 removed from the table.

Motion adopted.

SB 412, establishing the office of technology development and telecommunications planning and the position of director of telecommunications in the department of resources and economic development.

The question is on the adoption of the committee recommendation of Ought to Pass.

(The Chair recognized Sen. Reynolds to speak on the committee recommendation.)

SENATOR REYNOLDS: Thank you, Madam President. Madam President, I move Senate Bill 412 ought to pass. Senate Bill 412, which is being redistributed as I speak, is a bill that would create a position of telecommunications director in the office of Department of Economic Development. Madam President and colleagues, this bill raises to the forefront telecommunications as a priority in New Hampshire. Today we've heard two bills, one to assist in the expansion capacity for the North Country; we also heard Senate Bill 419 relative to the duties of the Energy Planning and Advisory Board. We're going to be talking about other bills today that deal with economic development. But, Madam President, this bill is a bill that would move forward the issue of broadband deployment and telecommunications in the State of New Hampshire. We all heard about the economic stresses that we have throughout the state, particularly in Coos County. Having a statewide director of telecommunications is going to be a major step forward in New Hampshire to allow us to develop a comprehensive broadband plan, to allow for further economic development in the state, and a way to create call centers in parts of the state that desperately need economic development; to help us attract federal funding for infrastructure in New Hampshire that we need.

Now, Madam President, the bill calls for the funding of this position through an assessment that would be done through the Public Utilities Commission. So no General Fund dollars are involved, no money will be taken from any other department to fund this important position. But we have to pay attention to broadband deployment in New Hampshire, because we're falling behind. Our surrounding states, particularly Vermont, have been very aggressive about telecommunications and infrastructure. This is an opportunity for us, as a state, to prioritize the importance of telecommunications and broadband in New Hampshire. And I would ask the body to move and approve the ought-to-pass motion. Thank you, Madam President.

(The Chair recognized Sen. D'Allesandro to ask a question of Sen. Reynolds.)

SENATOR D'ALLESANDRO: I don't have any problem with the bill, but I do have a problem with the way the financing of the bill is written. Because

it says you will take a hundred thousand dollars in the first fiscal year ending in 2008. This bill won't pass and become law until almost the end of the fiscal year. So is it the intention to draw down a hundred thousand dollars in '08 and it lapse over to '09, so you'll have 200,000 in '09? Or are you going to do a pro ration based on when the bill passes?

SENATOR REYNOLDS: Thank you, Sen. D'Allesandro. It is intended to be a split assessment; in other words, it's not supposed to be all in one year, if that answers the question.

SENATOR D'ALLESANDRO: I think, though, if that's the situation, then I think somewhere along the line you're going to have to amend this to indicate that the fiscal '08 assessment is pro rated based on the passage of the bill, and that if you're doing it – I don't know if you're going to collect on a monthly basis, on a quarterly basis, on a semi-annual basis. But regardless, you should state how you're going to collect it so that the assessment for FY '08 will be exactly that, and then the hundred thousand dollar assessment will come into play in the next fiscal year. I mean there just needs some direction as to how to collect this assessment. Thank you.

SENATOR REYNOLDS: Thank you, Senator. If I may respond briefly, there are some technical amendments to this bill that we will bring forward once the bill is passed in the House. There is some question about perhaps renaming the position, and I certainly appreciate Sen. D'Allesandro's suggestion and I will certainly bring that forward in the House if the body passes it. Thank you.

(The Chair recognized Sen. Gatsas for a question of Sen. Reynolds.)

SENATOR GATSAS: Thank you, Senator. Is this a tax that's going to be applied to the land lines?

SENATOR REYNOLDS: This is an assessment that will be raised through the Public Utilities Commission on regulated telecommunications in the State of New Hampshire as it currently stands. Now, there has been some discussion about possibly amending this in the House to change the structure of the financing. Initially, I think this will be a de minimis impact on any regulated utility. And part of this, Senator, if I may just answer that, elaborate, is that if we get this position created, we will be able to then apply for federal funding through the USDA Rural Broadband Telecommunications Act, so some of this funding may, in fact, be one time only, two times only; we're not expecting this to be a long-time or burdensome impact on regulated utilities, as it stands.

SENATOR GATSAS: I guess a follow-up, Senator. I guess I'm not clear. Do we believe that the regulated utility is not going to pass this on to the customer as a tax?

SENATOR REYNOLDS: Thank you very much for the question, Sen. Gatsas. I guess it's a question of how one interprets what the assessment is. We don't call it a "tax." This legislation was brought forward with, in concert with the Public Utilities Commission; it's an assessment that's done, it's something that I would certainly say would be passed on to the consumer, but it's not a tax, per se, it's an assessment.

(The Chair recognized Sen. Barnes for a question of Sen. Reynolds.)

SENATOR BARNES: Thank you, Sen. Reynolds. Would you believe I was the one vote against this bill in committee, because I was under the impression, when I heard all of this, that my consumers, my constituents, are going to be picking up this tab and I had a real problem with that.

SENATOR REYNOLDS: I would certainly believe that you have every right to have your concerns. I would simply respectfully say that I think that the impact actually will be *de minimis*, and again, we are looking for a long-term solution with getting some federal funding. Thank you, Senator.

SENATOR BARNES: Follow-up question. Did I hear you mention the fact that you were going to have some amendments over to the House?

SENATOR REYNOLDS: I believe that may very well be done in a technical way, in talking with the Department of Economic Development in terms of the naming of the position and perhaps some of these other issues as well.

SENATOR BARNES: Senator, did you read the paper this morning? And did you see what the House did, and you want to send this over to the House to take care of, with that marijuana bill? (Laughter) I mean you really want to entrust that to that body over there? Come on, Senator, we should do our work here, not over there.

SENATOR REYNOLDS: I have to say, Senator, I haven't comprehensively read the paper today.

SENATOR BARNES: Thank you, Senator.

(The Chair recognized Sen. Foster for a question of Sen. Reynolds.)

SENATOR FOSTER: The total amount was a hundred thousand dollars, I think, is that what you said?

SENATOR REYNOLDS: Correct.

SENATOR FOSTER: And there's a lot of subscribers in New Hampshire. Did you ever sit down and try to figure out what we're talking about on a subscriber basis? It must be pennies? I don't ...

SENATOR REYNOLDS: Thank you very much for the question, Senator. In talking with the Public Utilities Commission about this, it was my understanding it was *de minimis*.

SENATOR FOSTER: Thank you.

(The Chair recognized Sen. Gatsas to speak.)

SENATOR GATSAS: Thank you, Madam President. This is one bill before us. We're going to see several bills today that those "pennies" are going to add up to dollars. And nobody's looking at the global picture saying that this economy is not really robust in New Hampshire. So the idea to say it's "pennies," there was somebody famous that says, "A hundred pennies is a dollar." So we are going to put some more stress – Sen. Clegg said that (laughter) – so we're going to put some more stress; it's a tax, it's a fee, it's an assessment; it's *de minimis*. But the landline user is going to pay for it. Thank you, Madam President.

(The Chair recognized Sen. Hassan to speak.)

SENATOR HASSAN: Thank you, Madam President. There's another famous person somewhere, somehow, said, "Penny-wise and pound-foolish." Little pennies, in this case, can add up to a capacity for connectivity in the North Country that will develop our economy and create an economic base to boost this economy and the tax base generally through all of the various kinds of taxes we use to support this state, and develop our economy and make this place the high-quality state it is to live in. This is a very good investment in our future. Thank you.

(The Chair recognized Sen. Bragdon for a question of Sen. Gatsas.)

SENATOR BRAGDON: Thank you, Senator. Is this a tax or a fee?

SENATOR GATSAS: Senator, as they say, you can put lipstick ... but it is what it is.

SENATOR BRAGDON: No more sayings, please. (Laughter)

SENATOR GATSAS: It's a tax.

SENATOR BRAGDON: Thank you.

SENATOR GATSAS: It's a tax, it's a fee, it's a tax.

(The Chair recognized Sen. Gallus to speak.)

SENATOR GALLUS: Thank you, Madam President. My only issue is, I'm under the impression that in this area the North Country is in fairly decent shape and that DRED is already working on a number of issues, so I find this to be a duplication and unnecessary at this particular time. It's something we need in the North Country, but there are a number of initiatives already on the table that are being worked on currently, and one really good one for the North Country. So I just think it's a duplication. Thank you, Madam President.

(The Chair recognized Sen. Odell to speak.)

SENATOR ODELL: Thank you, Madam President. I would just raise the issue of the regulated versus the unregulated community. I've had people from the landlines companies explain to me that they think it's unfair that only one segment of the telecommunications industries would be taxed or an assessment placed upon them. So as the amendments are being discussed and considered, I would hope that some deliberation be given to that perspective. Thank you, Madam President.

(The Chair recognized Sen. Fuller Clark to speak.)

SENATOR FULLER CLARK: Thank you very much. I would like to address Sen. Odell's concern and say that we are continuing to look at that issue and see how it might be possible for all of those various telecommunication entities to participate. It turned out to be somewhat more complicated by requiring them, as we understand it today, to be part of this assessment; they would then become regulated in every aspect in their endeavors. So I'm not sure that we want to, by one small amendment here, change a larger policy without further debate and understanding of what we're doing. But I think general feeling is that it should be shared between all of those telecommunication entities. We want to do it in a way that is acceptable to everyone involved.

(The Chair recognized Sen. Reynolds to speak.)

SENATOR REYNOLDS: Thank you, Madam President. Madam President, I just want to follow up a couple of comments. One is, in terms of the issue of whether or not there are major projects in the state regarding broadband infrastructure, I would say that there are a number of projects going on, including one that's being done with MCIC and other parts of the state. The problem we've had in New Hampshire, however, is that there is no one central state office coordinating all these efforts. So what we have are tensions between the private sector and Hanover, for example, and municipalities trying to get this done; we have no coordination of effort, we have duplication, and in my view we would be much better served by having someone at the state level helping us develop a comprehensive plan and do this in a thoughtful, responsible

manner. And I would say in response to those that would say this is a tax or this is a fee, we cannot afford to be left behind in New Hampshire in telecommunication. We need this for economic development. And the return on investment will be earned years and years to come. Thank you very much, Madam President.

(The Chair recognized Sen. Gatsas for a question of Sen. Gallus.)

SENATOR GATSAS: Sen. Gallus, isn't there a transaction that's just about completed by a company named FairPoint that is talking about doing this already?

SENATOR GALLUS: Actually, in many areas they're going to include better service, sure.

SENATOR GATSAS: Follow-up question? Senator, didn't we in the last budget remove the landlines from being exempt on a fee so that we could add it to the General Fund for expenditure in the budget, didn't we do that?

SENATOR GALLUS: Yeah.

SENATOR GATSAS: So we're going right back again to say, jeez, that exemption that we took away to put into the General Fund, we're just coming back for another tax; isn't that true?

SENATOR GALLUS: And I would have thought if DRED needed a new position, they would have asked for it in the budget last year. 'Cause they knew we had a problem, we had more of a serious problem at that particular time, with no one paying any attention to broadband maybe two years ago and a year and a half ago. But that didn't seem to be an issue with them at the time. Now we seem to be going down the right road with some remedies.

SENATOR GATSAS: Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on SB 412.

A roll call was requested by Sen. Gatsas, seconded by Sen. Bragdon.

The following Senators voted Yes: Reynolds, Sgambati, Burling, Cilley, Janeway, Kelly, Gottesman, Foster, Larsen, DeVries, D'Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Kenney, Odell, Roberge, Bragdon, Clegg, Gatsas, Barnes, Letourneau, Downing.

Yeas: 14 - Nays: 10

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 449, relative to immunity for emergency services volunteers. Executive Departments and Administration Committee. Ought to Pass with Amendment, Vote 5-0. Senator Cilley for the committee.

Executive Departments and Administration

March 13, 2008

2008-1006s

06/09

Amendment to SB 449

Amend the title of the bill by replacing it with the following:

AN ACT relative to the status of emergency services volunteers.

Amend the bill by replacing all after the enacting clause with the following:

1 New Subparagraph; Definition of Employee. Amend RSA 281-A:2, VII(a) by inserting after subparagraph (7) the following new subparagraph:

(8) Any person who is officially designated by the governing body of a political subdivision as a volunteer in a New Hampshire citizen corps local council program that is organized, recruited, trained, supervised, and has been activated by an authorized political subdivision employee or official acting in his or her capacity as the emergency management director of the political subdivision.

2 Definition of Employee. Amend RSA 281-A:2, VII(b) to read as follows:

(b) "Employee," with respect to public employment shall not include any inmate of a county or state correctional facility who is, under RSA 651, required or allowed to work or perform services for which no significant remuneration is provided, any volunteer not covered under RSA 281-A:2, VII(a)(2) through [5] 8, who performs services for which no significant remuneration is provided, or any participant performing community service work under a court order or the provisions of a court diversion program, or any person providing services as part of a residential placement for individuals with developmental, acquired, or emotional disabilities. "Employee," with respect to public employment, shall include any person participating in a local welfare work program established under RSA 165:31; however, the local governing body may vote to make the provisions of this chapter not applicable to local welfare work program participants through guidelines adopted under RSA 165:1, II.

3 Effective Date. This act shall take effect January 1, 2009.

2008-1006s

AMENDED ANALYSIS

This bill adds certain emergency services volunteers to the definition of "employee" with respect to public employment.

SENATOR CILLEY: Thank you, Madam President. I move Senate Bill 449 ought to pass with amendment. This bill adds certain emergency services volunteers to the definition of "employee" with respect to public employment. The amendment replaces the whole bill and title providing an extended yet compromised definition of "employee." The amendment clarifies that employees by statute need to be organized, trained and called out by the local authorized political entity in order to have complete coverage. Please join the ED&A Committee in the passage of ought to pass with amendment. Thank you, Madam President.

The question is on the adoption of Committee Amendment 1006s. Committee Amendment 1006s adopted.

Sen. Foster asserted Rule 42 on SB 449.

The question is on the adoption of Ought to Pass as Amended on SB 449.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

Sen. Foster asserted Rule 42 on SB 449.

MOTION TO REMOVE FROM THE TABLE

Sen. Burling moved to have SB 438 removed from the table.

Motion adopted.

SB 438, relative to contractor accountability and disclosure in the public works construction procurement process.

**The question is on the adoption of Committee Amendment 0751s.
Senate Executive Departments and Administration
February 20, 2008
2008-0751s
05/09**

Amendment to SB 438

Amend RSA 21-I:81-b as inserted by section 1 of the bill by replacing it with the following:

21-I:81-b Worksite Accountability. At the onset of site work on any state construction project, the general contractor or designated project construction manager, if any, shall provide to the awarding agency a list of all subcontractors, and independent contractors on the job site with a record of the entity to whom that subcontractor or independent contractor is directly contracted, and by whom that contractor or subcontractor is insured for worker's compensation purposes. This list shall be posted on the jobsite and updated as needed and also posted on the agency website, to be updated weekly. Under no circumstances shall a subcontractor or independent contractor be present on a state construction site without the contractor's name and direct contracting relationship being posted in the visible location at the worksite.

(The Chair recognized Sen. Burling to speak to the legislation.)

SENATOR BURLING: I would, Madam President. The action I would like for the Senate Chamber to join us in is voting down the committee amendment as it currently exists to make way for a floor amendment which I will speak to the minute we vote down this committee amendment. So if we can begin by voting this amendment down, I'll proceed later.

**The question is on the adoption of Committee Amendment 0751s.
Committee Amendment 0751s failed.**

Sen. Burling offered a floor amendment.

**Sen. Burling, Dist. 5
March 20, 2008
2008-1097s
05/10**

Floor Amendment to SB 438

Amend RSA 21-I:81-b as inserted by section 1 of the bill by replacing it with the following:

21-I:81-b Worksite Accountability. At the onset of site work on any state construction project, including any construction project undertaken by the community technical college system and the university system of New Hampshire, the general contractor or designated project construction manager, if any, shall provide to the awarding agency a list of all subcontractors, and independent contractors on the job site with a record of the entity to whom that subcontractor or independent contractor is directly contracted, and by whom that contractor or subcontractor is insured for worker's compensation purposes. This list shall be posted on the jobsite and updated as needed and also posted on the agency website, to be updated weekly. Under no circumstances shall a subcontractor or independent contractor be present on a state construction site without the contractor's name and direct contracting relationship being posted in the visible location at the worksite.

SENATOR BURLING: Madam President, the floor amendment I intend to offer is 1097s. I was tricked again by somebody pressing into my hand a copy of the old committee amendment, which we don't want to do, we voted that one down. So we're working on 1097s.

PRESIDENT LARSEN: Floor Amendment 1097s has been proposed. Would you like to discuss that amendment?

SENATOR BURLING: Thank you so much. The amendment makes it clear that at the onset of site work on any state construction project, including construction projects undertaken by the Community Technical College System and the University System. We're talking about the big contracting agencies here. The provisions of this statute will apply in those job situations. And, Madam President, I would say that this is in concurrence with the intention of the ED&A Committee when we first worked on this bill. It seems a good piece of work to us, it will ensure that the citizens of New Hampshire who labor to improve our infrastructure and buildings will not be excluded from state jobs, and it will ensure that there is a fair accounting and payment for jobs done in the State of New Hampshire. So we enthusiastically ask for your support on 1097s.

The question is on the adoption of Floor Amendment 1097s.

(The Chair recognized Sen. Janeway for a question of Sen. Burling.)

SENATOR JANEWAY: Sen. Burling, I don't see in the amendment any indication – it talks about when it should be posted at the job site, but it seems to me in an earlier one there was a time upon which it was to be reported elsewhere. And my mind may be failing me, but it seems to me at one point there was something that indicated at the initiation of site work or something. So I just wonder if that is as clear as it should be.

SENATOR BURLING: It is pointed out to me as I stand here that we are replacing section 1. The provisions you're talking about may be in 2 or 3 which are still in the bill.

SENATOR JANEWAY: Thank you.

SENATOR BURLING: But I must say I'm not entirely clear as to what reference you're making. I think the addition of this to the bill will make for a very good bill.

SENATOR JANEWAY: Okay, thank you.

Recess/Out of Recess.

The question is on the adoption of Floor Amendment 1097s on SB 438.

(The Chair recognized Sen. Burling to speak.)

SENATOR BURLING: Madam President, by way of clarification, I'd just like to say I have the text of the bill before me which begins with an Arabic 1, new sections, and the text of the bill that run down the page is in that Arabic 1. And what this amends is the worksite accountability provision in that section 1. And all we're doing is amending that worksite accountability provision; the rest of the text of the bill remains in place. I know it's confusing, and we're confusing ourselves a little bit here. But that's what we're doing. So the amendment is to the worksite accountability provision of Arabic 1 of the Senate Bill 438.

The question is on the adoption of Floor Amendment 1097s.

Floor Amendment 1097s adopted.

Sen. Clegg offered a floor amendment.

Sen. Clegg, Dist. 14

Sen. Gatsas, Dist. 16

Sen. Downing, Dist. 22

Sen. Kenney, Dist. 3

Sen. Barnes, Dist. 17

Sen. Gallus, Dist. 1

Sen. Odell, Dist. 8

Sen. Letourneau, Dist. 19

March 4, 2008

2008-0869s

03/05

Floor Amendment to SB 438

Amend the introductory paragraph of RSA 21-I:81-a and RSA 21-I:81-a, I as inserted by section 1 of the bill by replacing them with the following:

21-I:81-a Requirement for Listing Subcontractors Bids for State Construction Contracts. The following requirements apply to the construction, reconstruction, installation, demolition, maintenance, or repair of any building by a public agency, including the community college system and university system of New Hampshire, that is required to be awarded through competitive bidding.

I. A general contractor shall provide to the agency a list of the names, addresses, CEO, CFO, other LLC principals, and each subcontractor to be used in the performance of the contract within 48 hours of the contract award.

SENATOR CLEGG: Madam President, I'd like to offer Floor Amendment 0869s.

PRESIDENT LARSEN: You may speak to that as it's being distributed.

SENATOR CLEGG: Thank you. This amendment does not undo the amendment we just voted on; in fact, it enhances that amendment to some degree. What this does is it takes out, in the original bill, under 21-I:81-a, it said "road or bridge construction projects," and the problem with that is that when we do road construction projects you'll call for asphalt and you'll find 15 independent truck drivers who will work for you that day, and tomorrow you may want 18 trucks and the 15 guys you had yesterday may not be any of those 18. So to try to constantly, on road projects, update who is and who isn't your subcontractor is nearly impossible. When we do those projects, DOT already requires that the hands-on people belong, to a greater degree, to the contract that actually bids the job. So it doesn't come into play like building the University System or building a new building for the State. The second problem a lot of the contractors had that I spoke to was that putting in their subs when they put in their bids was, to some degree, tedious; to another degree they felt that they were always giving away who was giving them their jobs, or who was giving them quotes. So what they ask is, if they were awarded the job we make them, within 48 hours, give a list of subs. Now, I can tell you that when you've got a big job, 48 hours after being awarded it isn't enough time to rebid all your subs. So we're not out there trying to play a game, but what they wanted to do is keep as much of their information proprietary but still comply with our request that within 48 hours after being awarded the bid, give us the list of those people that we can expect to see on the job. So we do two things with this amendment. Well, three things. We keep the amendment we just passed; we take road projects out, because it

would be next to impossible, if not impossible, to actually comply with the law; and the second one is that we allow them to keep, to some degree, the proprietary information until they're actually awarded the job, and then they would have to come up with the list, like I say, within 48 hours. So I'd ask for your support. It helps a lot of the people in the industry that I've spoken to on both sides, whether they're union or nonunion, they think that this is a fair compromise. So I ask for your help. Thank you.

Recess/Out of Recess.

MOTION TO TABLE

Sen. Burling moved to have SB 438 laid on the table.

Motion adopted.

LAI D ON THE TABLE

SB 438, relative to contractor accountability and disclosure in the public works construction procurement process.

SB 312-FN, relative to insurance coverage for obesity and morbid obesity. Finance Committee. Ought to Pass, Vote 5-2. Senator Hassan for the committee.

SENATOR HASSAN: Thank you, Madam President. This bill requires insurance coverage for the diseases and ailments caused by obesity and morbid obesity and treatments for such, including bariatric surgery when determined to be medically necessary by a physician. This bill will not have any direct fiscal impact on the State. Since the State is self-insured, it is not required to follow this law. Additionally, we learned in the Finance Committee that the State plan does currently cover diseases related to obesity as well as bariatric surgery, although the decision to cover the latter, the bariatric surgery, is made according to slightly different guidelines under the State's plan than is provided by this bill. It is up to the State whether or not they choose to follow the precise guidelines of this bill. The cost of covering treatment for the many illnesses associated with obesity – and they run from cancer to diabetes – would likely be far more expensive in the long run than covering the cost of treatment for conditions related to obesity or for bariatric surgery. Therefore, it is likely that this bill could result in overall cost savings for insurance companies as well as the State. The Finance Committee asks your support for the motion of ought to pass. Thank you.

(The Chair recognized Sen. Clegg to speak.)

SENATOR CLEGG: Thank you, Madam President. I'd like to thank the Finance Committee for the work it did. We just passed today a bill that talked about wellness and how wellness programs are going to bring insurance down. This is one indication that we're really serious about what we're going to do in the state, and we have to make sure the insurance companies know it's a partnership; it's a partnership between us and them and everyone else. And I thank you again for taking the time to look at this and seeing that this is actually a good thing for the state and a good thing for the state workers.

The question is on the adoption of committee recommendation of Ought to Pass on SB 312-FN.

A roll call was requested by Sen. Foster, seconded by Sen. Gottesman.

The following Senators voted Yes: Gallus, Reynolds, Sgambati, Burling, Cilley, Janeway, Odell, Roberge, Kelly, Bragdon, Gottesman, Foster, Clegg, Larsen, Barnes, Letourneau, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.

The following Senators voted No: Kenney, Gatsas, DeVries.

Yeas: 21 - Nays: 3

Motion of Ought to Pass adopted, bill ordered to Third Reading.

MOTION TO REMOVE FROM THE TABLE

Sen. Cilley moved to have SB 525 removed from the table.

Motion adopted.

SB 525, establishing the fourth Sunday in May as Emergency Medical Technician Memorial Day.

The question is on the adoption of Floor Amendment 1023s.

Sen. Cilley, Dist. 6

March 13, 2008

2008-1023s

04/05

Floor Amendment to SB 525

Amend the title of the bill by replacing it with the following:

AN ACT establishing the first Saturday in May as Emergency Medical Services Providers Memorial Day.

Amend the bill by replacing section 1 with the following:

1 New Section; Powers of Governor and Council; Emergency Medical Services Providers Memorial Day. Amend RSA 4 by inserting after section 13-m the following new section:

4:13-n Emergency Medical Services Providers Memorial Day. In recognition of the service given by the men and women who, night and day, serve the people of this state as emergency medical services providers, and inviting the governments, communities, and people of this state to observe such day with appropriate ceremonies and activities, the governor shall proclaim the first Saturday in May of each year as Emergency Medical Services Providers Memorial Day in honor of the emergency medical services providers who have been killed or disabled in the line of duty and those still serving.

2008-1023s

AMENDED ANALYSIS

This bill establishes the first Saturday in May as Emergency Medical Services Providers Memorial day.

Sen. Cilley withdrew Floor Amendment 1023s.

Sen. Cilley offered a further floor amendment.

Sen. Cilley, Dist. 6

March 17, 2008

2008-1035s

04/05

Floor Amendment to SB 525

Amend the title of the bill by replacing it with the following:

AN ACT establishing the first Saturday in May as Emergency Medical Services Provider Recognition Day.

Amend the bill by replacing section 1 with the following:

1 New Section; Powers of Governor and Council; Emergency Medical Services Provider Recognition Day. Amend RSA 4 by inserting after section 13-m the following new section:

4:13-n Emergency Medical Services Provider Recognition Day. In recognition of the service given by the men and women who, night and day, serve the people of this state as first responders, emergency medical technicians, and paramedics, and inviting the governments, communities, and people of this state to observe such day with appropriate ceremonies and activities, the governor shall proclaim the first Saturday in May of each year as Emergency Medical Services Provider Recognition Day in honor of the emergency medical services providers who have been killed or disabled in the line of duty and those still serving.

2008-1035s

AMENDED ANALYSIS

This bill establishes the first Saturday in May as Emergency Medical Services Provider Recognition day.

PRESIDENT LARSEN: Sen. Cilley moves to withdraw 1023s, and if you would like to speak to the Floor Amendment 1035, you may speak at this time while it's being distributed.

SENATOR CILLEY: Thank you. And I'm sure my colleagues will recall that Senate Bill 525 sought to recognize the sacrifices and the service provided by our emergency medical services providers. There were some technical issues with the bills, some of my colleagues were concerned that the day that we were implementing in the bill, it was called "Memorial Day." Originally that day of recognition fell on Memorial weekend. This amendment corrects all of that, you'll notice that the title itself has been corrected to read, establishing "the first Saturday in May as Emergency Medical Services Provider Recognition Day." Again, I will remind everybody what I said last week. This coincides with a national week of recognition and memorial, but we have crafted a bill in New Hampshire that will hopefully not interfere with any of our other significant holidays and yet we will be one of the first in the country to set aside this day to say "thank you" to our emergency medical services providers. So with that, I would ask my colleagues to please pass this amendment and pass the bill. Thank you.

(The Chair recognized Sen. Barnes to speak.)

SENATOR BARNES: Thank you, Madam President. I just rise to thank Sen. Cilley for working with her constituents who wanted this piece of legislation, to take care of some of the concerns that were addressed. And this amendment that Sen. Cilley has brought forward I think takes care of all the concerns that were talked about. Once again, Sen. Cilley, thank you for a marvelous job.

SENATOR CILLEY: Thank you.

The question is on the adoption of Floor Amendment 1035s.

Floor Amendment 1035s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 525.

A roll call was requested by Sen. Cilley, seconded by Sen. Barnes.

The following Senators voted Yes: Gallus, Reynolds, Kenney, Sgambati, Burling, Cilley, Janeway, Odell, Roberge, Kelly, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, DeVries, Letourneau, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.

The following Senators voted No: None.

Yeas: 24 - Nays: 0

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

MOTION TO REMOVE FROM THE TABLE

Sen. Fuller Clark moved to have SB 451 removed from the table.

Motion adopted.

SB 451, authorizing rate recovery for electric public utilities investments in distributed energy resources.

The question is on the adoption of Committee Amendment 1072s.

Energy, Environment and Economic Development

March 18, 2008

2008-1072s

09/03

Amendment to SB 451

Amend the bill by replacing all after the enacting clause with the following:

1 New Chapter; Electric Utility Investment in Distributed Energy Resources. Amend RSA by inserting after chapter 374-F the following new chapter:

CHAPTER 374-G

ELECTRIC UTILITY INVESTMENT IN DISTRIBUTED ENERGY RESOURCES

374-G:1 Purpose. Distributed energy resources can increase overall energy efficiency and provide energy diversity by eliminating, displacing, or better managing energy deliveries from the centralized bulk power grid, in keeping with the objectives of RSA 362-F:1. It is therefore in the public interest to stimulate investment in distributed energy resources in New Hampshire by encouraging New Hampshire electric public utilities to invest in distributed energy resources benefiting the transmission and distribution system under state regulatory oversight.

374-G:2 Definitions. In this chapter:

I. "Commission" means the public utilities commission.

II. "Distributed energy resources" means electric generation, energy storage, demand response, load reduction or control programs, and technologies or devices located on or inter-connected to the local electric distribution system for purposes including but not limited to reducing line losses, supporting voltage regulation, or peak load shaving, as part of a strategy for minimizing transmission and distribution costs as provided in RSA 374-F:3, III. Distributed energy resources shall exclude generation projects in excess of 5 megawatts and generation projects intended to produce electric energy primarily for retail. In addition, any biomass-fueled generation project shall meet the emission requirements for eligible biomass technology under RSA 362-F:2, VIII and any fossil fueled generation project must meet the following emission standards (in lbs/MW-H): NO_x - 0.07; CO - 0.10; VOCs - 0.02. If a fossil fueled generation project produces combined heat and power, a credit to meet the emission standard

may be applied at the rate of one MW-H for each 3.4 million BTUs of heat recovered, as long as such units achieve a minimum energy efficiency of 60 percent, measured as usable thermal and electrical output in BTUs divided by fuel input in BTUs, and are installed as integrated combined heat and power applications.

374-G:3 Investments in Distributed Energy Resources. Notwithstanding any other provision of law to the contrary, as provided in RSA 374-G:4, a New Hampshire electric public utility may invest in or own distributed energy resources, located on the premises of a retail customer of the electric public utility. Distributed electric generation owned by or receiving investments from an electric utility under this section shall be limited to a cumulative maximum in megawatts of 12-1/2 percent of the utility's total distribution peak load in megawatts.

374-G:4 Rate Filing; Authorization.

I. A New Hampshire electric public utility may engage in a distributed energy resources program and may seek rate recovery for its investments in distributed energy resources from the commission by making an appropriate rate filing. Such filing shall include a detailed description and economic evaluation of the proposed investment and a discussion of the benefits of the proposal with specific reference to the factors listed in paragraph II. In addition, the utility shall describe any equipment or installation specifications, solicitations, and procurements it has or intends to implement and show that it has made reasonable efforts to involve local businesses in its program. The utility shall also provide evidence of compliance with any applicable emission limitations.

II. Prior to authorizing a utility's recovery of investments made in distributed energy resources, the commission shall determine that the utility's investment and its recovery in rates, as proposed, are in the public interest. Determination of the public interest under this section shall include but not be limited to consideration and balancing of the following factors:

(a) Whether the expected value of the economic benefits of the investment to the company's ratepayers over the life of the investment outweigh the economic costs to the company's ratepayers.

(b) The efficient and cost-effective realization of the purposes of RSA 362-F and the restructuring policy principles of RSA 374-F:3.

(c) The costs and benefits to any participating customer or customers.

(d) The energy security benefits of the investment to the state of New Hampshire.

(e) The environmental benefits of the investment to the state of New Hampshire.

(f) The economic development benefits and liabilities of the investment to the state of New Hampshire.

(g) The effect on the reliability, safety, and efficiency of electric service.

(h) The potential benefits and liabilities of the program to the state of New Hampshire.

(i) The effect on competition within the region's electricity markets and the state's energy services market.

III. Authorized and prudently incurred investments shall be recovered under this section in a utility's base distribution rates as a component of rate base, and cost recovery shall include the recovery of depreciation, a return on investment, taxes, and other operating and maintenance expenses directly associated with the investment, net of any revenues received by the utility directly attributable to the investment.

IV. The rate of return applied to investments authorized under this section shall be based on the utilities' most recent rate of return established by the commission. The commission shall add an incentive to the return on equity component of 25 to 100 basis points as it deems appropriate to encourage sufficient and timely investments in an approved distributed energy resource program.

V. The commission shall approve, disapprove, or approve with conditions a utility rate filing under this section within 90 days of its filing. The commission may extend this deadline to 6 months at its discretion for any filing involving an investment in excess of \$1,000,000. The commission may also extend the deadline at its discretion for failure of the applicant to respond to data requests on an expedited timeline.

374-G:5 Exemption; Rural Electric Cooperatives. The requirements for commission authorization under RSA 374-G:4 shall not apply to rural electric cooperatives for which a certificate of deregulation is on file with the commission.

374-G:6 Exclusion. Any renewable generating project funded in part by a distribution utility pursuant to this chapter shall not be included in the calculation of the total rated generating capacity under RSA 362-A:9, I for purposes of limiting net metered renewable generating projects.

2 Electric Utility Investment in distributed Energy Resources; Report. The public utilities commission shall prepare a report reviewing and evaluating utility distributed energy resources projects proposed and implemented under RSA 374-G, to be filed on November 1, 2013, with the governor, the president of the senate, the speaker of the house of representatives, and the chairmen of the house science technology, and energy committee and the senate energy, environment, and economic development committee. The report shall include any recommended changes to RSA 374-G.

3 Effective Date. This act shall take effect 60 days after its passage.

SENATOR FULLER CLARK: Thank you very much, Madam President. I move that Senate Bill 451 ought to pass with amendment. Senate Bill 451 would allow utilities to invest in distributed energy resources, such as energy efficiency, load reduction, or small, small renewable energy projects that provide benefits to New Hampshire electric consumers. Such products [sic] can help improve efficiency, reduce the impact of high market prices for imported fuel, and help the state meets its goals for renewable energy and greenhouse gas reduction. Senate Bill 451 will facilitate the integration of small, local-scale projects into the electric grid and will enable them to displace fossil fuel central station generation. In the long run, this is critical to improving the state's economic climate by reducing our dependence on imported energy, and the benefits in terms of cost, economic development, energy security, climate change are huge. I'd like to say that this really is the alternative of trying to address the issues surrounding the expansion of our transmission capacity, because what this bill will do is it will allow for new and innovative generation possibilities to occur on site of the user. So I would urge you to pass this bill. I would like you also to recognize that in the amendment that certain compromises were worked out; it adds the additional requirements that have to be used by the PUC in terms of authorizing, that such projects shall go forward. And in particular, if you were to look at the amendment, the first thing they must consider is whether the expected value of the economic benefits for the investment to a company's ratepayers over the life of the investment outweigh the economic cost to the company's ratepayers. And the last thing they have to consider is the effect on

competition within the energy region's electricity market and the state's energy service market. So there is that kind of review that goes forward with the PUC. In addition, the bill now excludes generation projects in the excess of five megawatts and generation projects that are intended to produce electrical energy primarily for sale or resale.

I do have a further amendment that corrects language, because in the amendment in the Calendar it doesn't say "for sale or resale"; it says "retail." And, finally, it also makes it clear that there will be a limit to the cumulative maximum in megawatts of twelve and a half percent of the utility's total distribution peak load in megawatts. That's a reduction. When the bill originally came in, it was at 25 percent. So, I would urge this committee [sic] to vote ought to pass on the amendment and then allow for the further amendment to come forward that makes that one language correction change. Thank you, Madam President.

(The Chair recognized Sen. Gatsas to speak.)

SENATOR GATSAS: Thank you, Madam President. This must be one of those "de minimis" costs that we've discussed in a couple of bill before, but I have an interesting article that will show you that it's really not so de minimis. This talks about Unitil going in for a rate increase. Funny, it says published March 19th 2008; average monthly bill to go up \$6.04. From May of 2006 to May of 2008 there's been a 44 percent "de minimis" increase in rates for Unitil customers, on 500 kilowatts, from 5684 to 8169. That's what they're asking to go to, 8169. I don't have the other utilities, 'cause I just happened to see this article in the *Concord Monitor* today. But I'm sure if I looked at the percentages, that the increases that we're talking about for ratepayers in these small bills as they come one at a time – renewal energy, 10 million; RGGI, unknown; this one, unknown – and I find it amusing when I read the legislation that when you look, whether the expected value of the economic benefits of the investment to the company's ratepayers over the life of the investment outweigh the economic costs to the company's ratepayers. That's incredible. We continue going up in rates, in the State of New Hampshire, and I know that sounds like pennies, it's six dollars. But we better start looking at some of the major employers in the State of New Hampshire, 'cause they're going to start leaving, and I don't know what that financial impact is going to be to this state. They're going to move, and they're going to move to North Carolina, Oklahoma and other places where the "de minimis" cost is not as great.

So when we look at these studies and say the impact of the rates going up really isn't a lot, there's a company in New Hampshire that for every penny increase in a kilowatt hour is a million dollars. One million dollars for every penny. Has anybody sat down and collectively looked at what these costs are? No, we haven't. We just say that if the benefit is greater, then the ratepayers are going to pay. A 44 percent increase. How do we plan that they're going to pay for these things? Energy efficiency, that's what we're going to tell them. That poor lady that lives in her house that's 80 years old, that doesn't know the first thing about how to go to get energy efficiency dollars, her rates are up 44 percent. The company that it cost \$1 million per kilowatt hour is going to leave this state. BET tax, business profits tax ... and jobs. We're looking to turn this state into what's happening in the North Country. We're putting our businesses in a vital position. Gas is up, the cost of oil is up, and now we're going to increase energy costs. We best be very careful what we're doing. Because if we lose three or four major manufacturers in this state, we're going to have a bigger problem than what we're trying

to resolve right now in this budget. These may not look like they're big deals, and they may sound like, you know, it's the way we need to go. But when you look at these numbers, and they didn't come from me, I have no idea – and that's only on 500 kilowatts. I asked people in here, the average house is a thousand. So when we look at those rates, we better understand what's happening. Because slowly but surely, slowly but surely, we're getting back to where we were some seven or eight years ago: the highest rates in New England. We're climbing and we're getting there slowly. Thank you, Madam President.

(The Chair recognized Sen. Odell to speak.)

SENATOR ODELL: Thank you, Madam President. I feel strongly that this is an opportunity for the State of New Hampshire to look forward and not to look backward. This legislation had nothing to do with the 44 percent increase in the rates at Until. This actually offers an opportunity to the business community as well as the distribution companies to use innovative technology and new ways of doing things to try to actually reduce costs. Whether it's storage devices, whether it be from innovative ways of producing power at the local level so we don't have to distribute it over a wide network area. There's many opportunities here. I'm not a technology person. I know one thing: I'm not going to stand here and be an advocate of higher electric rates. But I am not for standing still and watching us become the victims of foreign oil, energy productions that we cannot control and have no influence over. I think we ought to be doing more here to protect ourselves, to enhance our capabilities instead of putting our head in the sand. Thank you, Madam President.

(The Chair recognized Sen. Gatsas for a question of Sen. Odell.)

SENATOR GATSAS: Senator, can you show me in here where that technology and those abilities aren't going to be passed on to the ratepayer first?

SENATOR ODELL: It will be a capital cost in some cases, but remember, we have entrusted, as a state, to the Public Utilities Commission to weigh on our behalf the economic values to the ratepayer and the disadvantages, so that the only projects that are approved by the Public Utilities Commission would go forward.

SENATOR GATSAS: Follow-up. The answer to the simple questions was, yes or no, does this not impact the ratepayer?

SENATOR ODELL: It impacts the ratepayer from the standpoint if it goes into the capital base, I would say only the equity portion of it. In other words, the equity portion is normally 40 to 50 percent of a project. Only that portion would be directed toward the rate base, and over time, and maybe rather quickly, some of these projects actually would reduce the costs of delivering energy to some businesses and some people in the local community.

SENATOR GATSAS: Thank you.

Sen. Gottesman moved the question.

President Larsen, without objection, closed debate with one speaker remaining.

(The Chair recognized Sen. Hassan to speak.)

SENATOR HASSAN: Thank you, Madam President. I rise to speak in support of Senate Bill 451. And just to say that basic economics tell us that when supply begins to narrow and demand begins to increase, things get more expensive. That's exactly what Until said yesterday

when it went in to ask for more, for an increase in rates. We have an increasingly narrow supply of traditional fossil fuels that Unitil depends on, we have an increased energy demand. This bill goes at both issues; it reduces demand and it increases supply. It's exactly what we should be doing. As Sen. Odell said, it is forward-looking. Otherwise, the rates will, in fact, continue to go up. Thank you, Madam President.

The question is on the adoption of Committee Amendment 1072s.

Committee Amendment 1072s adopted.

Sen. Fuller Clark offered a floor amendment.

Sen. Fuller Clark, Dist. 24

March 20, 2008

2008-1101s

06/01

Floor Amendment to SB 451

Amend RSA 374-G:2, II as inserted by section 1 of the bill by replacing it with the following:

II. "Distributed energy resources" means electric generation, energy storage, demand response, load reduction or control programs, and technologies or devices located on or inter-connected to the local electric distribution system for purposes including but not limited to reducing line losses, supporting voltage regulation, or peak load shaving, as part of a strategy for minimizing transmission and distribution costs as provided in RSA 374-F:3, III. Distributed energy resources shall exclude generation projects in excess of 5 megawatts and generation projects intended to produce electric energy primarily for sale or resale. In addition, any biomass-fueled generation project shall meet the emission requirements for eligible biomass technology under RSA 362-F:2, VIII and any fossil fueled generation project must meet the following emission standards (in lbs/MW-H): NO_x - 0.07; CO - 0.10; VOCs - 0.02. If a fossil fueled generation project produces combined heat and power, a credit to meet the emission standard may be applied at the rate of one MW-H for each 3.4 million BTUs of heat recovered, as long as such units achieve a minimum energy efficiency of 60 percent, measured as usable thermal and electrical output in BTUs divided by fuel input in BTUs, and are installed as integrated combined heat and power applications.

SENATOR FULLER CLARK: Yes, thank you very much. I'd like to speak to the amendment while it's being passed out, it's Amendment 1101s. May I do that?

PRESIDENT LARSEN: You may speak to that amendment as it's being distributed.

SENATOR FULLER CLARK: The only change to the language that is in your Calendar and in the previous amendment is on line 9 in the amendment. In your Calendar it says, "produce electric energy primarily for retail"; here it says, "produce electric energy primarily for sale or resale." And if you read the entire sentence, it says: "Distributed energy resources shall exclude generation projects in excess of 5 megawatts and exclude generation projects intended to produce electric energy primarily for sale or resale." This is to make it clear that these projects are being produced on site for consumers and ratepayers, and there was – in translating from one amendment to another, the word "retail" was substituted rather than "for sale or resale." And that corrects that.

The question is on the adoption of Floor Amendment 1101s.

Floor Amendment 1101s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 451.

A roll call was requested by Sen. Barnes, seconded by Sen. Bragdon.

The following Senators voted Yes: Reynolds, Sgambati, Burling, Janeway, Odell, Kelly, Bragdon, Gottesman, Foster, Larsen, DeVries, D'Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Kenney, Cilley, Roberge, Clegg, Gatsas, Barnes, Letourneau, Downing.

Yeas: 15 - Nays: 9

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

MOTION TO REMOVE FROM THE TABLE

Sen. Burling moved to have SB 438 removed from the table.

Motion adopted.

SB 438, relative to contractor accountability and disclosure in the public works construction procurement process.

The question is on the adoption of Floor Amendment 0869s.

Sen. Clegg, Dist. 14

Sen. Gatsas, Dist. 16

Sen. Downing, Dist. 22

Sen. Kenney, Dist. 3

Sen. Barnes, Dist. 17

Sen. Gallus, Dist. 1

Sen. Odell, Dist. 8

Sen. Letourneau, Dist. 19

March 4, 2008

2008-0869s

03/05

Floor Amendment to SB 438

Amend the introductory paragraph of RSA 21-I:81-a and RSA 21-I:81-a, I as inserted by section 1 of the bill by replacing them with the following:

21-I:81-a Requirement for Listing Subcontractors Bids for State Construction Contracts. The following requirements apply to the construction, reconstruction, installation, demolition, maintenance, or repair of any building by a public agency, including the community college system and university system of New Hampshire, that is required to be awarded through competitive bidding.

I. A general contractor shall provide to the agency a list of the names, addresses, CEO, CFO, other LLC principals, and each subcontractor to be used in the performance of the contract within 48 hours of the contract award.

SENATOR BURLING: Thank you, Madam President. Madam President, in the intervening few moments, I've had a chance to look at Floor Amendment 0869 and to communicate with a couple of people who have been essential to this process. This floor amendment appears to be widely accepted by people who are concerned about passage of this bill, and so I would encourage my colleagues in the Senate to vote "yes" on the adoption of 0869.

The question is on the adoption of Floor Amendment 0869s.

Floor Amendment 0869s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 438.

A roll call was requested by Sen. Gatsas, seconded by Sen. Barnes.

The following Senators voted Yes: Gallus, Reynolds, Kenney, Sgambati, Burling, Cilley, Janeway, Odell, Roberge, Kelly, Bragdon, Gottesman, Foster, Clegg, Larsen, Barnes, DeVries, Letourneau, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.

The following Senator voted No: Gatsas.

Yeas: 23 - Nays: 1

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 327-FN, relative to compensation for state employees injured in the line of duty. Finance Committee. Ought to Pass, Vote 7-0. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you, Madam President. I move Senate Bill 327 ought to pass. This bill specifies that if a state employee is injured in the line of duty and is permanently disabled, the employee shall not be terminated from state service until he or she has applied for disability retirement and a final decision on the application is made and all appeals are finalized. The Finance Committee asks for your support on the motion of ought to pass. Thank you, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on SB 327-FN.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 329, relative to payment of members of screening panels for medical injury claims. Finance Committee. Ought to Pass, Vote 5-2. Senator Janeway for the committee.

SENATOR JANEWAY: Thank you, Madam President. I move Senate Bill 329 ought to pass. Medical screening panels are intended – I say “intended” – to reduce malpractice rates. This bill confirms that a retired judge serving as chair of a medical screening panel could be compensated. The current rate is \$527 per diem. As amended by the Senate Judiciary Committee, in the belief that volunteers may no longer be available, the bill also sets compensation at a rate of \$475 a day for the other two members, attorneys or doctors, serving on the medical screening panels. The estimated annual cost of this legislation for the panel chairs is \$25,020, which is included in the Judicial budget. The annual cost for the other two panel members is estimated at \$42,750, of which \$20,000 may be covered by the Judicial budget for general expenses; the balance may result in a slight reduction in the lapse. The Finance Committee asks your support for the motion of ought to pass on Senate Bill 329. Thank you.

(The Chair recognized Sen. D'Allesandro to speak.)

SENATOR D'ALLESANDRO: Thank you, Madam President. I rise against the motion of ought to pass. We were told by Mr. Zibel, who represented

the Court, that they had no trouble finding people to serve on this panel and they didn't pay them. So it seems to me that if you can find people who are willing to serve and you don't have to pay them, why should you begin to pay them. It seems to me that that made good sense; if public servants were willing to participate at no cost, we should take advantage of that situation. And, again, we asked specifically the question: Did you have any trouble filling the panels? The answer was no, there was no trouble filling the panels. So I think it's a waste of this money being spent when it doesn't have to be spent. Thank you, Madam President.

(The Chair recognized Sen. Clegg to speak.)

SENATOR CLEGG: Thank you, Madam President. I rise in favor of the adoption. And I'll tell you that, while originally when they talked about medical screening panels, they talked about judges who were going to volunteer their time and they were on retirement, and doctors were supposed to be so happy to come in, and another lawyer, to give up that time. We were also told that these weren't going to be full-blown trials. Well, we thought they would be, some of us did, and that's exactly what they've come out to be. So the Court came in and asked us if we wouldn't compensate a retired justice for sitting on the panel. Because it suddenly became less than lucrative for him to just volunteer his time when he could actually go and sit on another case as a retired judge and make the daily allowable. So I said, along with my colleagues, if we're going to start paying a judge, why wouldn't we want to pay his colleague who's also a lawyer? And then what about the doctor? I actually think a doctor has to go to school longer than the judge and the lawyer to get his degree. So why is it all of a sudden only the judge gets paid and the other two guys who have just as much invested in their education still sat for free. So our opinion on the Judiciary Committee was, and still is, I believe, that if we're paying one, you need to pay everybody. So I ask that you support the committee recommendation.

(The Chair recognized Sen. Gallus to speak.)

SENATOR GALLUS: Thank you, Madam President. I agree, if we're paying one, then we should probably be paying the other. So I'll be the first guy in line. But we have thousands of commissions and committees in the State of New Hampshire where we have numerous volunteers that step forward. This issue has not been a problem at all, as you've already heard stated from the Finance chair; they have not had a problem getting doctors and lawyers to sit on this panel. And so I see this as a bad precedent, because I think a lot of other boards in the State of New Hampshire will want to step forward and also be paid as they serve as volunteers, as most of us do in this body. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on SB 329.

A division vote was requested.

Yeas: 13 - Nays: 11

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 331-FN, establishing new positions and realigning functions at the department of corrections. Finance Committee. Ought to Pass with Amendment, Vote 7-0. Senator D'Allesandro for the committee.

Sen. D'Allesandro, Dist. 20
March 10, 2008
2008-0898s
04/05

Amendment to SB 331-FN

Amend RSA 21-H:4 as inserted by section 2 of the bill by deleting RSA 21-H:4, VII.

Amend the bill by replacing all after section 2 with the following:

3 Department of Corrections; Commissioner, Assistant Commissioner. RSA 21-H:6 is repealed and reenacted to read as follows:

21-H:6 Commissioner and Other Department Officials; Appointment; Term.

I. The commissioner of the department shall be appointed by the governor, with the consent of the council, and shall serve for a term of 4 years from the date of appointment and until a successor is appointed.

II. The commissioner of the department shall nominate for appointment by the governor, with the consent of the council, an assistant commissioner who shall serve at the pleasure of the commissioner.

III. The commissioner shall nominate for appointment by the governor, with the consent of the council, an inspector general who shall serve at the pleasure of the commissioner.

IV. The commissioner shall nominate for appointment by the governor, with the consent of the council, a director of security and training who shall serve at the pleasure of the commissioner.

V. The commissioner shall nominate for appointment by the governor, with consent of the council, each division director and warden of all the New Hampshire state prisons. All division directors and the wardens shall serve at the pleasure of the commissioner.

VI. The commissioner of the department shall nominate for appointment by the governor, with the consent of the council, physicians, and dentists who shall serve at the pleasure of the commissioner.

VII. Wardens, physicians, and dentists may be assigned to any correctional facility at the discretion of the commissioner.

4 Department of Corrections; Qualification and Compensation of Certain Officials. Amend RSA 21-H:7, I to read as follows:

I. The commissioner [and], assistant commissioner, ***inspector general, director of security and training, and the directors of all divisions*** of the department shall be qualified to hold such positions by reason of education and experience.

5 Department of Corrections; Qualification and Compensation of Certain Officials. Amend RSA 21-H:7, III to read as follows:

III. The salaries of the commissioner, assistant commissioner, ***inspector general, director of security and training, and the directors of all divisions***, and the division directors of the department shall be as specified in RSA 94:1-a.

6 Department of Corrections; Powers and Duties of Commissioner. Amend RSA 21-H:8, II(d) to read as follows:

(d) Delegate authority to subordinates as the commissioner deems necessary and appropriate, except that rulemaking authority shall not be delegated. The commissioner shall provide by delegation for the assistant commissioner, ***warden***, or a division director to exercise authority in the commissioner's absence. All such delegations shall be made in writing, shall be disseminated to all division directors, shall clearly delineate the authority delegated and the limitations thereto, and shall be kept on file in the commissioner's office. The assistant commissioner

shall assume the duties of the commissioner in the event that the commissioner [~~is unable for any reason~~] ***becomes incapacitated and is unable*** to perform such duties.

7 Department of Corrections; Assistant Commissioner. Amend RSA 21-H:8-a to read as follows:

21-H:8-a Assistant Commissioner; Status in Retirement System. For purposes of classification under RSA 100-A, the assistant commissioner, ***inspector general, and director of security and training*** of the department of corrections shall be considered [a] permanent [~~policeman~~] ***policemen*** if [~~the assistant commissioner was a~~] ***such individuals were*** permanent police [~~member~~] ***members*** of group II for at least 10 years prior to appointment [~~as assistant commissioner~~] ***in their respective positions***, and [~~continues~~] ***continue*** to be certified as [a] police [~~officer~~] ***officers*** under RSA 188-F:26 and 188-F:27.

8 Salaries for Unclassified Officers.

I. The salaries for the unclassified positions established in this act shall be determined in accordance with RSA 14:14-c.

II. The positions of inspector general and director of security and training established in this act shall only be staffed if funding is available within the department's existing budgetary appropriations for the biennium ending June 30, 2009.

9 Department of Corrections; Transfer Authority. Notwithstanding any provision of law to the contrary, and for the biennium ending June 30, 2009, the commissioner of the department of corrections may make transfers within and among class lines to fund the positions of inspector general and director of security and training established in this act.

10 Repeal. RSA 21-H:7, II, relative to qualifications of division directors in the department of corrections, is repealed.

11 Effective Date. This act shall take effect July 1, 2008.

2008-0898s

AMENDED ANALYSIS

This bill:

I. Establishes the unclassified positions of inspector general and director of security and training within the department of corrections.

II. Establishes appointment procedures for the inspector general, director of security and training, physicians, and dentists, and permits the commissioner of the department of corrections to assign or reassign wardens, physicians, or dentists to any correctional facility.

III. Is a request of the department of corrections.

SENATOR D'ALLESANDRO: Thank you, Madam President. I'm recovering from shock: Sen. Barnes and I voted the same way. (Laughter)

SENATOR BARNES: The first time this Session.

SENATOR D'ALLESANDRO: It's Holy Thursday. It's his gift to me. Thank you. Thank you, Madam President. I move Senate Bill 331 ought to pass with amendment. This bill as amended by the Finance Committee reclassifies two positions in the Department of Corrections. These positions and reorganization were requested in the budget process, and during the budget process we said that no new money could be spent in this reorganization scheme. The Commissioner requested these changes, brought them forward as part of his overall reorganization plan. I repeat, there's no additional money required for these positions. This bill does not automatically guarantee that these individuals in these positions will be in Group 2 Retirement, which was another concern of the Com-

mittee. Rather, it gives the people who may come into these positions, who are already in Group 2, the ability to remain in Group 2. The bill also gives the Commissioner greater flexibility. Again, this is part of his reorganization plan to move wardens, physicians and dentists around to the different facilities as the needs manifest themselves. The Finance Committee asks your support for the motion of ought to pass as amended. Thank you, Madam President.

The question is on the adoption of Committee Amendment 0898s. Committee Amendment 0898s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 331-FN.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 402, relative to large groundwater permitting requirements for wells installed prior to 1998. Finance Committee. Interim Study, Vote 6-0. Senator Sgambati for the committee.

SENATOR SGAMBATI: Thank you, Madam President. I move Senate Bill 402 be referred to interim study. The Department of Environmental Services supported the proposed expansion, but stated they could not do it without additional resources and the hiring of additional staff. Those are not available within the DES budget this biennium, so without further consideration, we would like to ask that this be moved to study to review alternatives to the financing proposed in the bill. Thank you, Madam President.

The question is on the adoption of committee recommendation of Refer to Interim Study on SB 402.

Committee recommendation of Refer to Interim Study adopted.

Sen. Hassan asserted Rule 42 on SB 402.

SB 502-FN, relative to unemployment compensation. Finance Committee. Ought to Pass with Amendment, Vote 6-1. Senator Hassan for the committee.

Sen. Hassan, Dist. 23

March 11, 2008

2008-0971s

01/09

Amendment to SB 502-FN

Amend the bill by deleting section 6 and renumbering the original section 7 to read as 6.

2008-0971s

AMENDED ANALYSIS

This bill:

I. Defines "part-time work."

II. Defines "full-time work."

III. Allows refusal of acceptance of full-time and part-time work to be considered in unemployment compensation benefit eligibility considerations.

SENATOR HASSAN: Thank you, Madam President. I move Senate Bill 502-FN ought to pass with amendment. This bill allows those seeking part-time work to be considered for unemployment compensation ben-

efits. "Part-time work" is defined in Senate Bill 502 to mean between 20 and 37 ½ hours of work per week. Under current law, those who tell the Department of Employment Security that they cannot accept full-time employment are not eligible for benefits unless they fit into certain limited categories. This bill will help alleviate the economic burden that that rule places currently on working families. It will also modernize our unemployment system and reflect the modern labor market which increasingly relies on part-time workers. It will also align our system with potential changes in federal law that may make the state eligible for more federal funds. The committee amendment deletes section 6 from the bill as amended by the Senate. The Committee believes we should not be giving the Executive Branch broad authority to continue the current discount rate for unemployment taxes when we are facing an uncertain and declining economy. The Finance Committee asks your support for the motion of ought to pass as amended on Senate Bill 502-FN. Thank you.

The question is on the adoption of Committee Amendment 0971s. Committee Amendment 0971s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 502-FN.

A roll call was requested by Sen. Barnes, seconded by Sen. Gallus.

The following Senators voted Yes: Reynolds, Sgambati, Burling, Cilley, Janeway, Odell, Kelly, Bragdon, Gottesman, Foster, Larsen, DeVries, D'Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Kenney, Roberge, Clegg, Gatsas, Barnes, Letourneau, Downing.

Yeas: 16 - Nays: 8

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 512-FN, relative to emergency management powers. Finance Committee. Ought to Pass, Vote 6-0. Senator Sgambati for the committee.

SENATOR SGAMBATI: Thank you, Madam President. I move Senate Bill 512 ought to pass. The bill authorizes the Commissioner of DHHS to establish temporary acute care centers for the delivery of medical services in the case of a public health emergency. It also re-establishes the laws regarding public health emergency powers and the safe disposal of corpses. Lastly, it establishes a commission to study the authority to practice or provide health and medical care in the event of a public health emergency. The Committee feels that this is the best and most effective way to manage a medical emergency throughout the state. While exact fiscal impact cannot be determined at the time, there's no predicting when and if we will have an emergency, the bill does not contain any appropriation or establish any new positions. The Finance Committee asks for your support for the motion of ought to pass. Thank you, Madam President.

Sen. Hassan presiding.

The question is on the adoption of committee recommendation of Ought to Pass on SB 512-FN.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 530-FN-A-L, relative to kindergarten aid. Finance Committee. Ought to Pass with Amendment, Vote 7-0. Senator Larsen for the committee.

Senate Finance
March 12, 2008
2008-0992s
04/09

Amendment to SB 530-FN-A-LOCAL

Amend RSA 198:15-r, I as inserted by section 1 of the bill by replacing it with the following:

I. There is established in the department of education a kindergarten construction program *to provide certain construction grants*. For the period beginning July 1, 1997, and ending June 30, [2008] **2013**, the commissioner of education shall make grants available to eligible districts that currently do not operate a public kindergarten program. *Such eligible districts shall receive, at their election, either:*

(a) A construction grant to cover 75 percent of the actual cost of construction of kindergarten facilities, exclusive of site acquisition and core facilities[-] ; or

(b) A construction grant to cover 100 percent of the actual cost of the design and construction of a basic code compliant kindergarten facility, but shall not include site acquisition and core facilities. In this subparagraph, "basic code compliant kindergarten facility" means a new building or an addition to an existing building that the commissioner of the department of education determines satisfies the minimum standards for school approval for a kindergarten program and all applicable building code standards. The commissioner shall establish specifications pursuant RSA 198:15-s, IV for such a basic code compliant facility.

(c) A school district that displaces pupils from an existing classroom space in order to use such space to provide a kindergarten program shall be eligible for a construction grant under subparagraphs I(a) or (b) to cover the costs incurred in constructing or renovating new classroom space for the displaced pupils. Grants shall also cover the cost of initial furniture, fixtures, and equipment needed to operate a kindergarten program.

2008-0992s

AMENDED ANALYSIS

This bill:

I. Extends the kindergarten construction aid program through June 30, 2013.

II. Allows a school district to elect a construction grant to cover either 75 percent of the actual cost of construction of kindergarten facilities or 100 percent of the actual cost of design and construction of a basic code compliant kindergarten facility.

III. Requires that a school district providing a public kindergarten program as of September 2008 or September 2009 shall receive, in that same year, an additional adequate education grant amount based on the number of pupils attending kindergarten in the district as of the beginning of the school year.

IV. Requires certain school districts to submit a kindergarten implementation plan to the commissioner of the department of education detailing the district's plan to provide a public kindergarten program no later than September 2009.

SENATOR LARSEN: Thank you, Madam President pro tem. It is with a sense of great accomplishment and pride in our Senate Education colleagues' work that I move Senate Bill 530-FN ought to pass with amendment. Since coming to the Senate in 1995, together with others, we have been working to bring public kindergarten to all of New Hampshire's five-year-olds. In the seven terms I have sponsored at least six bills or amendments on the topic. For those of you who doubt the power of persistence, I want to bring you a brief history of kindergarten.

In 1993 I'm told there were 60 New Hampshire school districts without public kindergarten. In 1999 there were 33 districts that did not offer public kindergarten, and we created a Kindergarten Incentive Fund to encourage participation. By 2003, 19 school districts still left 3,426 five-year-olds without public kindergarten. Most recently, the 11 school districts that don't offer public kindergarten results in an estimated 1,970 youngsters still waiting for public kindergarten. Now, I want to applaud the recent cooperation and creativity of some of those 11 town leaders and their superintendents in stepping up to the challenge. Together with Sen. Downing, Letourneau and Estabrook, we have had some very good meetings to discuss ways to add flexibility to Senate Bill 530, helping the towns to offer an adequate education that includes kindergarten. A Senate Education Committee added that flexibility at the request of towns such as Windham, Pelham and Salem. So Senate Bill 530 extends the kindergarten's construction aid to New Hampshire's final 11 school districts that do not yet offer public kindergarten, to permit access to that program through June 30th of 2013. Again, in response to the concerns of town officials, the Finance Committee amended Senate Bill 530 to allow a school district to elect a construction grant to cover either 75 percent of the actual cost of construction of kindergarten facilities, or a hundred percent of the actual cost of the design and construction of a basic code-compliant kindergarten facility. This amendment was adopted by the Finance Committee to satisfy the need for the remaining 11 communities without kindergarten, to be able to pay for, at minimum, the basic code-compliant facility necessary to offer public kindergarten. By paying a hundred percent of the basic structure, we meet the towns' needs and address the 28-A issue.

The bill also requires that a school district providing a public kindergarten program, as of September 2008, or September 2009, shall receive in that same year an additional adequate education grant amount based upon the numbers of pupils attending kindergarten in the district as of the beginning of the school year. This real-time payment eliminates the problem of lagging ADMR payments. Lastly, the bill requires certain school districts to submit a kindergarten implementation plan to the Education Commissioner, detailing the district's plan to provide a public kindergarten program no later than September 2009. This bill, as amended by Senate Finance, does not require an appropriate for kindergarten adequate education grants, nor does it need an additional appropriation to the kindergarten construction program. The existing program currently has an available authorized appropriation of \$1,664,393 remaining, which will be funded through the sale of bonds. The Finance Committee asks for your support of the motion of ought to pass as amended on Senate Bill 530. Thank you.

(The Chair recognized Sen. Barnes for a question of Sen. Larsen.)

SENATOR BARNES: Sen. Larsen, I want to thank you for all your effort since you've come on board on the kindergarten issue. Would you believe that I had to sacrifice my body and run for a one-year school board

seat in Raymond in order to get kindergarten through. It only took us three tries, but we got it through. Would you also believe – and some members in here probably don't remember this, or they don't understand this – kindergarten just didn't start, 'cause in 1936 I was there. So kindergarten's been around for a long time. And I think the work you've done on it is super, and all you have to do is go into a classroom, would you believe, and you can tell the kiddos who have been to kindergarten and the ones that haven't; it doesn't take you too long to pick the ones out that haven't been.

SENATOR LARSEN: And I applaud you for standing up for kindergarten. When we knew that there were that many students without the opportunity, it was time to act, and you've acted, and I hope this body will act.

SENATOR BARNES: It made a big difference in my town.

(The Chair recognized Sen. Gatsas to speak.)

SENATOR GATSAS: Thank you, Madam President. I want to applaud my colleagues on the other side of the aisle understanding that unfunded mandates are supposed to be paid for when we're mandating them from the State. I just hope that the minimum standards in these kindergartens aren't cardboard walls and thatched roofs. It's certainly appreciative that those mandates at a hundred percent would be taken care of. Thank you.

(The Chair recognized Sen. D'Allesandro to speak.)

SENATOR D'ALLESANDRO: Thank you, Madam President. I rise in support of the bill. The Finance Committee had to face a rather difficult situation in this context. When Sen. Gatsas came and testified before us, and rightly so, he said: What about the 28-A issue, and how do you address the 28-A issue? I think there was a great deal of creativity from the Department of Education in order to address this situation, and being creative is very important in this situation because of the tremendous value of kindergarten. My colleague, Sen. Estabrook, has worked on this issue ad infinitum, really. And I was the benefit of kindergarten, or the beneficiary of going to kindergarten; I went to kindergarten at Saint Lazarus School, and the nuns took very good care of me. And on Holy Thursday, it seems to me, it's a wonderful gesture on their behalf to say almost everybody will have kindergarten in New Hampshire. So we addressed the 28-A issue by funding it at a hundred percent, and I'm sure there will be no thatched roofs, and I'm sure that all of those walls will be consistent, well done. And I'm sure if they need a little pressure to get up, Sen. Gatsas will be there, hammer in hand, to deliver the goods.

(The Chair recognized Sen. Downing to speak.)

SENATOR DOWNING: Thank you, Madam President. Again, I appreciate all the work Sen. Estabrook and Sen. Larsen did over the last couple of weeks with two communities that I represent, Pelham and Salem, and along with Windham. However, this past election every school bond was voted down, so those plans went out the window. The room is no longer available and won't be available for those students, unfortunately. We're going to be forced to have portable classrooms in Salem, and my community really doesn't want portable classrooms, there's no room for them; they'll take away playground space or parking area at the six elementary schools. And again I applaud their efforts, and we'll keep trying.

(The Chair recognized Sen. Letourneau to speak.)

SENATOR LETOURNEAU: I just rise to say thank you to all those involved in support and particularly for going at a hundred percent, which solves our 28-A issue. Hopefully, that that also solves your problem in Salem; if it's a hundred percent paid for, you may not have to go back to the voters for that. Both Derry and Windham have plans intact now for kindergarten, and I support this. Thank you.

Sen. Gottesman moved the question.

Without objection, the Chair moved to close debate

The question is on the adoption of Committee Amendment 0992s.

Committee Amendment 0992s adopted.

Sen. Bragdon asserted Rule 42 on SB 530-FN-A-L.

The question is on the adoption of Ought to Pass as Amended on SB 530-FN-A-L.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

Sen. Bragdon asserted Rule 42 on SB 530-FN-A-L.

Sen. Downing is in favor of Amendment 0992s on SB 530-FN-A-L.

SB 304-FN-L, repealing a fee charged by the registry of deeds. Finance Committee. Inexpedient to Legislate, Vote 5-2. Senator Janeway for the committee.

SENATOR JANEWAY: Thank you, Madam President pro tem. I move Senate Bill 304 inexpedient to legislate. This bill would repeal a fee to be charged by the registry of deeds that was passed during last year's budget process, to provide a dedicated source of funds for LCHIP. As you may recall, the program received \$6 million in General Funds for the current year, one half million dollars of which has been returned as part of the recent cutbacks. The budget we adopted last year stipulated that other means of funding should be explored for the second year. If none were identified and recommended, the deed fee would be adopted. Alternatives were explored. While the real-estate transfer tax was the most logical funding source, strenuous opposition ruled that out, so we are back to the deed fee. Let me be clear: if this bill were to pass, LCHIP would be without funding in the next fiscal year. This is a program that has proven its worth many times over. It leverages private funds, it galvanizes communities to action, it enhances our landscape and our historic structures. Many fine projects are in the queue for next and beyond. Staff from DRA, registers of deeds, and legislators have been working very hard in a collaborative manner to iron out the details of how the fee will be assessed and collected. It is estimated that this fee will bring in somewhat less than \$5 million for LCHIP in the upcoming fiscal year. The Finance Committee remains committed to this funding mechanism, which was adopted in last year's budget, and therefore asks for your support of the motion of inexpedient to legislate on Senate Bill 304. Thank you, Madam President.

MOTION TO TABLE

Sen. Reynolds moved to have SB 304-FN-L laid on the table.

Recess/Out of Recess.

Sen. Larsen presiding.

The question is on the motion to table SB 304-FN-L.

A roll call was requested by Sen. Gallus, seconded by Sen. Kenney.

The following Senators voted Yes: Reynolds, Sgambati, Burling, Cilley, Janeway, Odell, Kelly, Bragdon, Gottesman, Foster, Larsen, DeVries, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Kenney, Roberge, Clegg, Gatsas, Barnes, Letourneau, D'Allesandro, Downing.

Yeas: 15 - Nays: 9

Motion adopted.

LAID ON THE TABLE

SB 304-FN-L, repealing a fee charged by the registry of deeds.

SB 313, relative to transfers to the revenue stabilization reserve account. Finance Committee. Inexpedient to Legislate, Vote 5-2. Senator Janeway for the committee.

SENATOR JANEWAY: Thank you, Madam President. I move Senate Bill 313 inexpedient to legislate. This bill would have transferred \$33 million into the Revenue Stabilization Reserve Account, also know fondly as the "Rainy Day Fund." Circumstances have changed dramatically since the introduction of this bill. A full-blown credit crisis is unfolding before our eyes. State revenue projections have been shaved. It simply no longer makes sense to deposit additional money into the Rainy Day Fund at this point. Keep in mind that once the transfer is made, we can't access that money again until the end of the biennium. Given the lagging revenues and the fact that we recently learned that our FEMA match will be \$2 million more than budgeted, and that we're still 15 months from the end of the biennium, we should be able to access this money. We do currently have \$89 million in the Rainy Day Fund. While we all wish we could have added to that amount, it simply would not be wise to do so. So the Finance Committee asks your support for the motion of inexpedient to legislate on Senate Bill 313. Thank you.

(The Chair recognized Sen. Gatsas to speak.)

SENATOR GATSAS: Thank you, Madam President. I rise in opposition to the ITL motion. I think it's imperative that in the fiscal times that we're in right now, that that money go into the Rainy Day Fund so that the only way that we can touch it is if revenues don't come in, if revenues aren't coming in, and we'd have the ability to go. It would bring the Rainy Day Fund to \$122 million. Leaving it where it's at is going to make it very tempting to spend that money. We're moving on a prudent basis by cutting. That's a prudent way of adjusting the budget. Not looking at a windfall, because if we spend that money, the expenditure's going to go from 17 ½ percent to a number that's pretty close to 20 percent. We should pay very close attention to what we're doing. If revenues don't come in, we have the ability to go to the Rainy Day Fund. The fear I have is we spend this 33 million and still go after the Rainy Day Fund for a shortfall. It's not prudent business sense to not put the money in there. Sen. D'Allesandro brought a bill forward, he thought it was prudent back then. The Governor thought it was prudent. This piece of legislation was before us. We should make sure that we protect the interest of the taxpayers of this great state. We're going to be discussing some bills in

a little while that we don't know how we're going to pay for it, and we'll just leave it at the doorstep of the next Legislature. It's \$33 million that's sitting in a line item in the budget that makes it spendable. This piece of legislation would make it unspendable if the revenues didn't come in and we did it at the end of the biennium. We should be very careful by not allowing us just to spend money. Thank you, Madam President.

(The Chair recognized Sen. D'Allesandro to speak.)

SENATOR D'ALLESANDRO: Thank you, Madam President. I rise in support of the inexpedient to legislate. As chair of the Finance Committee, I'm very concerned about the financial state of the State of New Hampshire. When I put the bill in, to take the money and put it in the Rainy Day Fund, it appeared to be the prudent thing to do. The economy had not swung south at that time and our revenue projections were fairly in line with what we had done. I have said repeatedly before this body we will not – we will *not* vote for any further spending, and I've kept to my word as far as that's concerned. Bills that have come to our Finance Committee that have cost money have been rejected and we'll continue to do that. But it seems to me prudent financial management says that that 33 million should be kept where it is. We always have an unexpected event. As we think about what happened this winter and the danger of the floods, we know that \$2 million has not been paid back to the federal government in terms of the FEMA grant; that has to be taken care of. So it seems to be the ability to have that money available, if indeed an emergency occurred, is something that we ought to think about. Our budget increased, basically, by three percent. The cost drivers drove the other seven percent, and those cost drivers were bills that this state had to own up to and had to pay, and they included the state employees' benefits, health insurance, the \$30 million that we had to put into the Correction System because of the *Holiday* suit. The budget that we passed was a carefully crafted budget that paid strict attention to the needs of the state and our ability to address those needs. That's why I ask you support the Finance Committee in its decision and vote for inexpedient to legislate. Thank you, Madam President.

(The Chair recognized Sen. Gatsas for a question of Sen. D'Allesandro.)

SENATOR GATSAS: Senator, can you – the 2 million that you're talking about for the return of FEMA, –

SENATOR D'ALLESANDRO: Yes.

SENATOR GATSAS: – would those funds be taken out of this 33 million?

SENATOR D'ALLESANDRO: Those funds are going to have to be found someplace, Senator, because we owe the federal government money that they overpaid us. And those funds will accrue interest if we don't pay them.

SENATOR GATSAS: Follow-up. And the flood money of May of 2007, the 25 percent that's owed to the communities and has not been paid as of yet, which is still out there and outstanding, is that 3 million going to come out of this 33 million?

SENATOR D'ALLESANDRO: I'm not – I haven't seen that bill, so I don't know that it is 3 million, I haven't heard that. I haven't seen a bill addressing that.

SENATOR GATSAS: Follow-up. I believe that was the discussion we had during the budget period that talked about allocation of funds for the flood that haven't been paid back to the communities. That was an addi-

tional, as they call it, a – maybe you can give me the correct terminology, but that's for funds that would be due, to be payable in the second year of the biennium, or "specials." There you go, now I found it.

SENATOR D'ALLESANDRO: Legislative specials?

SENATOR GATSAS: Legislative specials.

SENATOR D'ALLESANDRO: I haven't seen that legislative special, so I can't give you an answer. It has not come, I haven't seen that bill. But, again, if the State has an obligation, it seems to me the State is going to be responsible for that further reason why the 33 million should be kept available. Because we should be addressing – if we have a bill, for example, that was caused by the floods and we agreed to do something, then we're going to have to live up to our responsibilities.

SENATOR GATSAS: Follow-up. So, Senator, could you check, as being chairman of Finance? Because my understanding is, is those communities haven't received any of that flood money, and if it needed legislation to come forward, maybe we should do something in Finance, 'cause I know we passed a law last year that said that 25 percent, or 12 ½ percent –

SENATOR D'ALLESANDRO: Twelve and a half, certainly.

SENATOR GATSAS: – correct, would be picked up.

SENATOR D'ALLESANDRO: I think at the last meeting of the Fiscal Committee, we did allocate some money for the floods, so some payments were paid, now, and we'll check on all of these other payments, and we will live up to our obligation.

SENATOR GATSAS: Thank you.

SENATOR D'ALLESANDRO: Thank you for bringing it to my attention, Sen. Gatsas.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on SB 313.

A roll call was requested by Sen. Kenney, seconded by Sen. Gatsas.

The following Senators voted Yes: Reynolds, Sgambati, Burling, Cilley, Janeway, Kelly, Gottesman, Foster, Larsen, DeVries, D'Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Kenney, Odell, Roberge, Bragdon, Clegg, Gatsas, Barnes, Letourneau, Downing.

Yeas: 14 - Nays: 10

Motion of Inexpedient to Legislate adopted.

SB 321, relative to transfers to the revenue stabilization reserve account. Finance Committee. Ought to Pass with Amendment, Vote 7-0. Senator D'Allesandro for the committee.

Senate Finance

March 17, 2008

2008-1043s

10/04

Amendment to SB 321

Amend the title of the bill by replacing it with the following:

AN ACT relative to construction or renovation of regional vocational centers, transferring certain positions from the pari-mutuel commission to the department of safety, and requiring certain operating budget reductions.

Amend the bill by replacing all after the enacting clause with the following:

1 Regional Vocational Centers; Construction or Renovation. Amend RSA 188-E:3, II to read as follows:

II. Upon completion, the constructed or renovated facility shall become the property of the school district. ~~[Provisions]~~ **Provision** of the site, parking, and other related areas shall be the responsibility of the local community. ***Site work, including but not limited to cut and fill work, compaction, demolition, relocation of utilities, relocation of roadways and sidewalks, and similar work within an area extending to one foot beyond the outside edge of the exterior walls of the building, shall be eligible for grants under paragraph I.*** Nothing shall prohibit the inclusion of the site and related facilities which are not funded as part of construction cost by the state under this chapter from being included in a regular building aid application of the district as provided in RSA 198:15-b.

2 Operating Budget, Judicial Branch. Notwithstanding 2007, 262:1, the appropriations for the judicial branch for the fiscal year ending June 30, 2008 shall be reduced by \$1,789,765. The director of the administrative office of the courts shall submit to the general court and the commissioner of the department of administrative services an itemization of the reductions in expenditure classes made to implement this section on or before June 15, 2008.

3 Operating Budget, Legislative Branch. Notwithstanding 2007, 262:1, the appropriations for the legislative branch for the fiscal year ending June 30, 2008 shall be reduced by \$1,000,000. The legislative budget assistant shall submit to the fiscal committee of the general court an itemization of the reductions in expenditure classes made to implement this section on or before June 15, 2008.

4 Positions Transferred from Pari-Mutuel Commission Racing Laboratory to Department of Safety Urine Testing Laboratory. Effective April 1, 2008, classified positions number 14543, 14545, and 30541 are transferred from the pari-mutuel commission racing laboratory, PAU 02-08-02, to the department of safety urine testing laboratory, PAU 02-15-04-11-02. The legislative budget assistant is authorized to adjust totals in 2007, 262 as made necessary by this section.

5 PAU 02-08-02; Pari-Mutuel Commission Racing Laboratory. Amend 2007, 262, PAU 02-08-02 as follows:

		Fiscal Year 2008	Fiscal Year 2009
Strike out:	10 Personal Services – Permanent	\$280,007	\$285,196
Insert:	10 Personal Services – Permanent	\$247,525	\$153,362
Strike out:	60 Benefits	\$139,292	\$141,876
Insert:	60 Benefits	\$123,603	\$78,200
Strike out:	Total	\$639,293	\$646,993
Insert:	Total	\$591,122	\$451,483
Estimated Source of Funds for Racing Laboratory			
Strike out:	General Fund	\$519,575	\$528,684
Insert:	General Fund	\$471,404	\$333,174
Strike out:	Total	\$639,293	\$646,993
Insert:	Total	\$591,122	\$451,483

6 PAU 02-15-04-11-02; Department of Safety Urine Testing Laboratory. Amend 2007, 262, PAU 02-15-04-11-02 as follows:

		Fiscal Year 2008	Fiscal Year 2009
Strike out:	10 Personal Services – Permanent	\$140,723	\$146,820
Insert:	10 Personal Services – Permanent	\$173,205	\$278,654
Strike out:	60 Benefits	\$73,294	\$76,722
Insert:	60 Benefits	\$88,983	\$140,398
Strike out:	Total	\$406,640	\$417,715
Insert:	Total	\$454,811	\$613,225
Estimated Source of Funds for Urine Testing Laboratory			
Strike out:	General Fund	\$406,640	\$417,715
Insert:	General Fund	\$454,811	\$613,225
Strike out:	Total	\$406,640	\$417,715
Insert:	Total	\$454,811	\$613,225

7 Effective Date. This act shall take effect upon its passage.

2008-1043s

AMENDED ANALYSIS

This bill:

I. Allows certain site work to be eligible for grants available for the construction or renovation of regional vocational centers.

II. Transfers certain positions from the pari-mutuel racing laboratory to the department of safety urine testing laboratory.

III. Directs the judicial branch and legislative branch to reduce budget appropriations by a specified amount for the fiscal year ending June 30, 2008.

SENATOR D'ALLESANDRO: Thank you, Madam President. I move Senate Bill 321 ought to pass as amended. The Bill as amended by the Senate Finance Committee directs the Judicial and Legislative branches to reduce their budget appropriations by a specified amount for the fiscal year ending June 30th, 2008. This is in line with the Governor's Executive Order 2008-1, 2008-2. This Executive Order directed state agencies to make the same cuts. Due to the separation of powers, however, legislation was needed to make the same request of the Legislative and Judicial branches. It also transfers positions from the Pari-Mutuel Racing Laboratory, which is now closed, to the Department of Safety Lab where these positions are necessary. Lastly, it allows certain site work to be eligible for grants available for construction or renovation of the regional vocational centers. The Finance Committee asks your support for the motion of ought to pass as amended. Thank you, Madam President.

The question is on the adoption of Committee Amendment 1043s.

Committee Amendment 1043s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 321.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 343-FN, making school building aid grants available to charter schools as reimbursement for annual lease costs. Finance Committee. Inexpedient to Legislate, Vote 4-3. Senator D'Allesandro for the committee.

MOTION TO TABLE

Sen. D'Allesandro moved to have SB 343-FN laid on the table.

Motion adopted.

LAI D ON THE TABLE

SB 343-FN, making school building aid grants available to charter schools as reimbursement for annual lease costs.

SB 516-FN-L, relative to aid for county bridges. Finance Committee. Ought to Pass, Vote 7-0. Senator Sgambati for the committee.

SENATOR SGAMBATI: Thank you, Madam President. I move Senate Bill 516 ought to pass. This bill makes county bridges – in fact, there is only one – eligible for the Bridge Aid Grant Program. The State and the county would share the cost to replace the bridge. It is important to note that the bill only allows the counties to apply for the aid; it does not guarantee or make it guaranteed funding from the grant program, or make any appropriation. The requests from the county would be considered in line with all other grant requests and subject to the approval by the Department of Transportation, as well as the availability of funds. The Finance Committee asks for your support for the motion of ought to pass. Thank you, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on SB 516-FN-L.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 543, establishing a commission to study court security. Finance Committee. Ought to Pass with Amendment, Vote 5-0. Senator D'Allesandro for the committee.

Senate Finance**March 17, 2008****2008-1040s****09/10****Amendment to SB 543**

Amend subparagraph I(g) of section 2 of the bill by replacing it with the following:

(g) The commissioner of the department of administrative services, or designee.

(h) One public member with knowledge of court security issues, appointed by the governor

Amend the bill by replacing section 3 with the following:

3 Duties. The commission shall study issues related to security in New Hampshire courts.

Amend the bill by replacing section 5 with the following:

5 Report. The commission shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, the chief justice of the supreme court, and the state library on or before November 1, 2008.

SENATOR D'ALLESANDRO: Thank you, Madam President. I move Senate Bill 543 ought to pass with amendment. This bill establishes a commission to study court security. The committee amendment adds to the membership of the study committee the Commissioner of Administrative Services or her designee. It also changes the language on line 17 and 18 of the original bill to include all New Hampshire courts. The original language left out the Probate and Family Courts. The last thing the committee amendment does is add the Chief Justice to the list of individuals in section 5 who are to receive a copy of the commission's report. The Finance Committee asks for your support for the motion of ought to pass as amended. Thank you, Madam President.

**The question is on the adoption of Committee Amendment 1040s.
Committee Amendment 1040s adopted.**

**The question is on the adoption of Ought to Pass as Amended
on SB 543.**

**Motion of Ought to Pass as Amended adopted, bill ordered to Third
Reading.**

SB 308-FN-A, restoring certain foreign dividend deductions under the business profits tax. Finance Committee. Ought to Pass with Amendment, Vote 6-0. Senator Odell for the committee.

**Senate Finance
March 17, 2008
2008-1041s
09/01**

Amendment to SB 308-FN-A

Amend the title of the bill by replacing it with the following:

AN ACT preventing potential double taxation on the identical gross business profits of related business organizations.

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraph; Preventing Potential Double Taxation. Amend RSA 77-A:4 by inserting after paragraph IV the following new paragraph:

IV-a.(a) In the case of a parent business organization, a deduction equal to the apportioned amount of gross business profits of the parent as are derived from one or more actual distributions received from a subsidiary, which distributions have already been subject to taxation under this chapter during the same or an overlapping fiscal period.

(b) For this paragraph only:

(1) "Apportioned amount of gross business profits" means the product of the total amount of gross business profits as are derived from actual distributions received by the parent from the subsidiary, multiplied by the apportionment fraction of the subsidiary as determined pursuant to RSA 77-A:3, II(a) for the tax period of the subsidiary that includes the date on which actual distributions were paid.

(2) "Parent" means a business organization which is required to file a separate business profits tax return and which controls, not merely invests, in one or more business organizations each required to file a separate business profits tax return and that make actual distributions to the parent.

(3) "Subsidiary" means a business organization which is required to file a separate business profits tax return and which is controlled by a parent, as defined in this paragraph.

(c) The purpose of this deduction is solely to prevent double taxation on the identical gross business profits of related business organizations.

2 Applicability. Section 1 of this act shall apply for all actual distributions received on and after August 17, 2007.

3 Effective Date. This act shall take effect upon its passage.

2008-1041s

AMENDED ANALYSIS

This bill prevents potential double taxation on the identical gross business profits of related business organizations.

SENATOR ODELL: Thank you, Madam President. I move Senate Bill 308-FN ought to pass with amendment. Last session we enacted House Bill 598 that repealed a business profits tax deduction that was intended to protect businesses from double taxation. Unfortunately, we quickly learned that this repeal would have unanticipated consequences, potentially exposing a number of our New Hampshire businesses to double taxation. This year Sen. Foster and I introduced Senate Bill 308 to correct these unintended consequences. Before the Finance Committee the Department of Revenue Administration proposed amendment language consistent with the goal to avoid double taxation and to do it in a way that did not cost the state budget any funds. Madam President, I'd ask my colleagues to vote down the committee amendment so that I can introduce a floor amendment that contains the basic language from the DAR [sic] amendment with some corrections. So my request is my colleagues vote down the committee amendment so that I can introduce a floor amendment. Thank you, Madam President.

The question is on the adoption of Committee Amendment 1041s.

Committee Amendment 1041s failed.

Sen. Odell offered a floor amendment.

Sen. Odell, Dist. 8

March 20, 2008

2008-1095s

10/09

Floor Amendment to SB 308-FN-A

Amend the title of the bill by replacing it with the following:

AN ACT preventing potential double taxation on the identical gross business profits of business organizations.

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraph; Preventing Potential Double Taxation. Amend RSA 77-A:4 by inserting after paragraph IV the following new paragraph:

IV-a.(a) In the case of a business organization which owns an equity interest in a subsidiary business organization, a deduction equal to the "apportioned amount of gross business profits," as defined in subparagraph (b), as are derived from one or more actual distributions received from the subsidiary business organization with respect to the equity interest, but only if the gross business profits of the subsidiary business organization has been subject to tax under this chapter in a business profits tax return that is separate from the return filed by or on behalf of the business organization claiming this deduction.

(b) For this paragraph only, the term "apportioned amount of gross business profits" means the product of the total amount of gross business profits as are derived from actual distributions received with respect to an equity interest in a subsidiary business organization, multiplied by the apportionment fraction of the subsidiary business organization as determined pursuant to RSA 77-A:3, II(a) for the tax period of the subsidiary business organization in which the income was subject to taxation. The business organization claiming this deduction must retain sufficient information to document the amount of the subsidiary business organization's income that has been subject to tax, the period or periods in which such income has been subject to tax, and the apportionment fraction applicable for such periods.

(c) The purpose of the deduction in this paragraph is solely to prevent double taxation on the identical gross business profits of business organizations.

2 Applicability. Section 1 of this act shall apply for all actual distributions received on and after August 17, 2007.

3 Effective Date. This act shall take effect upon its passage.

2008-1095s

AMENDED ANALYSIS

This bill prevents potential double taxation on the identical gross business profits of business organizations.

SENATOR ODELL: Thank you, Madam President. I would like to move Amendment 1095s, and speak to that motion, Madam President?

PRESIDENT LARSEN: You may speak to it as it's being distributed.

SENATOR ODELL: Thank you, Madam President. This amendment, floor amendment, proposes several additional modifications to this version to finish our work on this technical tax issue. The amendment would streamline the bill by making three changes. First, it eliminates unnecessary definitions of "parent" and "subsidiary." Second, it makes clear that the deduction is available to all similarly situated businesses regardless of how they are organized: corporations, partnerships, limited liability company or sole proprietorships. Third, it includes a clear recordkeeping obligation so that the taxpayer claiming the deduction bears all responsibility for maintaining records and documents necessary to prove their entitlement to the deduction. Madam President, in conclusion, our state constitution guarantees our businesses the right to be protected against double taxation. This bill, with this floor amendment, will establish a clear statutory provision to provide this protection. I urge my colleagues to join me in approving this floor amendment and then passing the bill. Thank you, Madam President.

(The Chair recognized Sen. Foster to speak.)

SENATOR FOSTER: Thank you, Madam President. I just wanted to thank Sen. Odell for his hard work on this piece of legislation. We've been working on this awhile. I think this amendment is the right step forward. Fundamentally what this bill does is put in law the constitutional provision that Sen. Odell noted; without it, practitioners would not necessarily be aware of their right here, and this puts in law a right that is established by the constitution as interpreted by the Supreme Court. So I thank you, Sen. Odell.

(The Chair recognized Sen. Gatsas for a question of Sen. Odell.)

SENATOR GATSAS: Senator, has the Commissioner of DRA seen this amendment?

SENATOR ODELL: I believe he has, and since we've been talking he has actually called me. I haven't been able to get to the phone to get him to call me back. But, so I don't know what his status is on this. But the basic elements of this amendment were in the committee amendment; there's just some streamlinings that have been done.

(The Chair recognized Sen. D'Allesandro to speak.)

SENATOR D'ALLESANDRO: Thank you, Madam President. I rise in support of the amendment. We arranged a series of meetings whereby Sen. Odell, the Commissioner, and the Commissioner's legal counsel met

and tried to address this situation and address the fiscal note that was on the original bill which said the State would lose \$13 million if this were changed. Out of these series of meetings came the amendments that you saw today. This second amendment is a perfection of the first amendment. We were deeply involved in the discussions, Sen. Odell more than I, but in the initial discussions I was involved and was assured that we didn't have a negative financial situation that was going to develop, but that we were correcting a situation where we had double taxation. And we wanted to be in concert with the law and have something that was constitutional. So I applaud the work of Sen. Odell, Sen. Foster and the cooperation of the Revenue Administration, the Commissioner, and his legal counsel who was very, very helpful and stepped up to the plate in terms of working with us. Thank you, Madam President.

The question is on the adoption of Floor Amendment 1095s.

Floor Amendment 1095s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 308-FN-A.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

Senators Clegg and Gatsas are in opposition to SB 308-FN-A.

SB 539-FN-L, relative to the cost of an adequate education and provision of fiscal capacity disparity aid. Finance Committee. Ought to Pass with Amendment, Vote 5-2. Senator Janeway for the committee.

Senate Finance

March 19, 2008

2008-1077s

04/10

Amendment to SB 539-FN-LOCAL

Amend RSA 198:38, I as inserted by section 4 of the bill by replacing it with the following:

I. "Average daily membership in attendance" or "ADMA" means the aggregate half-day membership of pupils in kindergarten through grade 12 attending schools operated by a school district divided by the number of half-days of instruction offered. The average daily membership in attendance shall include any pupil who is a resident of New Hampshire educated at public expense.

Amend RSA 198:38, VI as inserted by section 4 of the bill by replacing it with the following:

VI. "English language learner" means a child who has a predominant language other than English or who is educationally disadvantaged by a limited English proficiency, and who is receiving regularly scheduled English language instruction.

Amend RSA 198:40-a, IV as inserted by section 5 of the bill by replacing it with the following:

IV.(a) The sum total calculated under paragraphs I-III of this section shall be used to determine the cost of an adequate education which shall be used in each year of the biennium.

(b) Prior to or coinciding with the first disbursement of each fiscal year under RSA 198:42, the department shall notify a school district of the total amount of funds that have been allocated for each school within its jurisdiction during the fiscal year based on the sum of the school

district's adequate education grant amount plus the amount available to the school district from the education property tax. In addition, the department shall furnish to each municipality a report showing the municipality's cost of an adequate education sorted by a pupil's municipality of residence.

Amend the bill by inserting after section 7 the following and renumbering the original sections 8-15 to read as 9-16, respectively:

8 Transitional Education Aid; Biennium Ending June 30, 2011.

I. A municipality in which the estimated fiscal year 2010 adequate education grant is 85 percent or less than its fiscal year 2009 adequate education grant shall be eligible for transitional education aid for the fiscal year ending June 30, 2010 as follows:

(a) A municipality in the upper half of the first quartile with a median family income less than 125 percent of the state average median family income, shall receive transitional educational aid in the amount of 50 percent of the difference between its fiscal year 2009 adequate education grant and its fiscal year 2010 adequate education grant, less any fiscal capacity disparity aid received by the municipality in the 2010 fiscal year pursuant to RSA 198:40-c.

(b) A municipality in the upper half of the first quartile with a median family income between 125 percent and 150 percent of the state average median family income, shall receive transitional education aid in the amount of 25 percent of the difference between its fiscal year 2009 adequate education grant and its fiscal year 2010 adequate education grant, less any fiscal capacity disparity aid received by the municipality in the 2010 fiscal year pursuant to RSA 198:40-c.

(c) A municipality in the lower half of the first quartile with a median family income less than 110 percent of the state average median family income, shall receive transitional education aid in the amount of 50 percent of the difference between its fiscal year 2009 adequate education grant and its fiscal year 2010 adequate education grant, less any fiscal capacity disparity aid received by the municipality in the 2010 fiscal year pursuant to RSA 198:40-c.

(d) A municipality in the lower half of the first quartile with a median family income between 110 percent and 125 percent of the state average median family income, shall receive transitional education aid in the amount of 25 percent of the difference between its fiscal year 2009 adequate education grant and its fiscal year 2010 adequate education grant, less any fiscal capacity disparity aid received by the municipality in the 2010 fiscal year pursuant to RSA 198:40-c.

(e) A municipality in the upper half of the second quartile with a median family income less than 100 percent of the state average median family income, shall receive transitional education aid in the amount of 50 percent of the difference between its fiscal year 2009 adequate education grant and its fiscal year 2010 adequate education grant, less any fiscal capacity disparity aid received by the municipality in the 2010 fiscal year pursuant to RSA 198:40-c.

(f) A municipality in the upper half of the second quartile with a median family income between 100 percent and 110 percent of the state average median family income, shall receive transitional education aid in the amount of 25 percent of the difference between its fiscal year 2009 adequate education grant and its fiscal year 2010 adequate education grant, less any fiscal capacity disparity aid received by the municipality in the 2010 fiscal year pursuant to RSA 198:40-c.

II. A municipality in which the estimated fiscal year 2011 adequate education grant is 85 percent or less than its fiscal year 2009 adequate education grant shall be eligible for transitional education aid for the fiscal year ending June 30, 2011 as follows:

(a) A municipality in the upper half of the first quartile with a median family income less than 125 percent of the state average median family income, shall receive transitional educational aid in the amount of 25 percent of the difference between its fiscal year 2009 adequate education grant and its fiscal year 2011 adequate education grant, less any fiscal capacity disparity aid received by the municipality in the 2011 fiscal year pursuant to RSA 198:40-c.

(b) A municipality in the upper half of the first quartile with a median family income between 125 percent and 150 percent of the state average median family income, shall receive transitional education aid in the amount of 12.5 percent of the difference between its fiscal year 2009 adequate education grant and its fiscal year 2011 adequate education grant, less any fiscal capacity disparity aid received by the municipality in the 2011 fiscal year pursuant to RSA 198:40-c.

(c) A municipality in the lower half of the first quartile with a median family income less than 110 percent of the state average median family income, shall receive transitional education aid in the amount of 25 percent of the difference between its fiscal year 2009 adequate education grant and its fiscal year 2011 adequate education grant, less any fiscal capacity disparity aid received by the municipality in the 2011 fiscal year pursuant to RSA 198:40-c.

(d) A municipality in the lower half of the first quartile with a median family income between 110 percent and 125 percent of the state average median family income, shall receive transitional education aid in the amount of 12.5 percent of the difference between its fiscal year 2009 adequate education grant and its fiscal year 2011 adequate education grant, less any fiscal capacity disparity aid received by the municipality in the 2011 fiscal year pursuant to RSA 198:40-c.

(e) A municipality in the upper half of the second quartile with a median family income less than 100 percent of the state average median family income, shall receive transitional education aid in the amount of 25 percent of the difference between its fiscal year 2009 adequate education grant and its fiscal year 2011 adequate education grant, less any fiscal capacity disparity aid received by the municipality in the 2011 fiscal year pursuant to RSA 198:40-c.

(f) A municipality in the upper half of the second quartile with a median family income between 100 percent and 110 percent of the state average median family income, shall receive transitional education aid in the amount of 12.5 percent of the difference between its fiscal year 2009 adequate education grant and its fiscal year 2011 adequate education grant, less any fiscal capacity disparity aid received by the municipality in the 2011 fiscal year pursuant to RSA 198:40-c.

III. The procedure for calculating equalized valuation per pupil and the definition of terms set forth in RSA 198:40-c shall apply to the calculation of transitional educational aid in this section.

Amend the bill by replacing section 16 with the following:

16 Effective Date.

I. Section 15 of this act shall take effect June 30, 2009.

II. The remainder of this act shall take effect July 1, 2009.

2008-1077s**AMENDED ANALYSIS**

This bill:

I. Determines the per pupil cost of the opportunity for an adequate education which includes differentiated aid distributed to schools based on the number of pupils receiving special education services, or eligible for a free or reduced-price lunch, or who are English language learners.

II. Requires schools receiving differentiated aid to use it to implement enhanced programs known to improve pupil achievement.

III. Establishes a joint legislative oversight committee on accountability for an adequate education.

IV. Provides fiscal capacity disparity aid, in addition to aid for the cost of the opportunity for an adequate education, based on a municipality's equalized valuation, including utilities, per pupil and median family income.

V. Provides transitional education aid for the biennium ending June 30, 2011 to certain municipalities in which the estimated fiscal year 2010 adequate education grant is 85 percent or less than its fiscal year 2009 adequate education grant.

SENATOR JANEWAY: Thank you again, Madam President. I move Senate Bill 539 ought to pass with amendment. Last week this body sent Senate Bill 539, with the disparity aid amendment, and sent it to the Finance Committee. The Finance Committee's work is embodied in yet another amendment which will be the focus of my remarks. This amendment, 1077, appears in your Calendar Addendum 11D, page three. It has two distinct parts. The first set contains some basically technical non-substantive changes. Those include: defining "average daily membership attendance," what an "English language learner" is, and clarifying the Department of Education's reporting to school districts and municipalities. The second and most important part of the amendment deals with what we term "transitional aid." The bill we passed last week, as you know, included a plan distributing \$47 million in fiscal capacity disparity aid for communities that have the double whammy of low property wealth per student and low family income, median family income, versus the state average. As logical as that formula, or any formula, is, you still end up with anomalies, and that was the case here. A number of communities with low property wealth are faced with large reductions in grants from their current levels with this proposal. Our objective with this transition aid was to create a financial shock absorber and time, two years, to help get the hardest-hit towns from point A, the current system, to point B, the new system. Here's how it works. It makes communities at the low end of the equalized valuation per pupil scale, the lowest quartile, and the lower half of the next quartile, eligible for this transitional aid. A further qualifier is that the community has to be losing more than 15 percent of its current state grant. The final eligibility standard sets thresholds on the communities' median family income. Rather than getting lost in the numbers, just understand that as the per-pupil property wealth increases, the bar for median family income rises. I'd like to emphasize that this process, while convoluted perhaps, is entirely logical; it is neither random nor arbitrary. For those communities that qualify as most eligible for this transition aid in the three sets that we identified, in the lower end of the scale, 50 percent of their loss is compensated in the first year, that's their loss relative to what they have been receiving, and 25 percent in year two, and that's the end of

it. Those communities in the second set, which have somewhat higher median family income, would receive 25 percent compensation in year one, and 12 ½ percent, half that, in year two. The cost, \$9.05 million in the first year, \$4.5 million in the second year, for a total of \$13.5 million. That, I think you should think of – or the Committee would suggest you think of as the one-time price to moderate the financial shock to what you might think of as the innocent victims of a fundamentally sound program. So I hope that you will approve Senate Bill 539.

(The Chair recognized Sen. Barnes for a question of Sen. Janeway.)

SENATOR BARNES: Yes, thank you, Madam President. Thank you, Sen. Janeway, and thanks for all your work on this. This week I do have a spreadsheet so I know what's happening here. I was negligent in not getting it last week, but this week I have it.

SENATOR JANEWAY: No harm.

SENATOR BARNES: My question for you is this: As you know, there are five plaintiff towns. This Senator has two of them, Allenstown and Pittsfield. I'm looking at Allenstown, and Allenstown finally has come out, in my opinion, okay. But there's a plaintiff town by the name of Pittsfield that is still in the soup. And I understand – now, I might be wrong; just, you know, what I hear in the hallways and you can't always trust what you hear in the hallway, I understand that. Sen. D'Allesandro taught me that years ago. But I heard that there were some towns, some Senators in Finance Committee had some money moved around to make their towns look a little bit better. But how in the world can we vote less money to a plaintiff town? I don't know how the other three came out, I don't have those numbers here, but the Senators here that had those towns I'm sure know it. I don't care what formula you use, and all this A, B, C and P, D, Q stuff, all I know is that a plaintiff town that's as poor as a church mouse is still in the "poop chute," and there are other towns that aren't in the "poop chute" that are doing well. And I don't understand, I'm sure you can explain to me why Pittsfield is still in the hole.

SENATOR JANEWAY: Well, to answer this, the charge that the numbers were somehow gamed by anyone, that's absolutely not so.

SENATOR BARNES: I'm happy to hear that.

SENATOR JANEWAY: These formulas were applied and where we came out is where the formulas, you know, directed us. We also did not break out plaintiff towns versus other towns in any way at all.

SENATOR BARNES: You only had five.

SENATOR JANEWAY: I realize that. So there is something – and I haven't got all the details in front of me – something that caused Pittsfield not to qualify under these standards that we worked out. And there certainly are other anomalies still, this certainly doesn't cure all.

SENATOR BARNES: Follow-up question. Would you be willing to come with me to the Pittsfield School System and walk the schools and then walk away telling me that they should be losing the money that they're losing?

SENATOR JANEWAY: I'll certainly come with you.

SENATOR BARNES: I appreciate that.

SENATOR JANEWAY: But I can't –

SENATOR BARNES: I'll set it up, Senator. When you see that, maybe you'll think differently; maybe you'll see that Pittsfield shouldn't be on the losing end. It just plain doesn't make sense to me. Thank you very much. And I know you're worked very hard on this.

SENATOR JANEWAY: If I may respond, –

SENATOR BARNES: And I appreciate your work.

SENATOR JANEWAY: – you know, Pittsfield isn't the only one, and there would be others.

SENATOR BARNES: But I don't appreciate a plaintiff town, Pittsfield, taking a loss. I think it's wrong, and I think it's wrong to vote for it.

SENATOR JANEWAY: I understand.

Recess/Out of Recess.

The question is on the adoption of Committee Amendment 1077s on SB 539-FN-L.

Committee Amendment 1077s adopted.

(The Chair recognized Sen. Kelly to speak.)

SENATOR KELLY: Last Thursday, as you all know, I spoke on the floor, and I stated that this bill was the beginning of a long process to solve the education funding dilemma. Today is the next step in this important legislative process. As well, it is important to remember that this process, as I see it, in my history, for the first time started the process by asking the question: What is important about education? Not by starting with the spreadsheet. It is also important to remember that this plan adheres to the New Hampshire Supreme Court mandate, and it's constitutional. I understand that there were unintended financial consequences to towns and districts due to moving from an unconstitutional education formula to a constitutional one. We recognized and addressed those difficulties by amending the plan with disparity aid for the poorest towns and transitional aid for those towns that experience a greater financial discrepancy. I insisted on the disparity aid, and I pushed for the transitional aid. And I will continue to work with the House and others to diminish those difficulties. My constituents did not send me to Concord, the State Capitol Building and to the Senate Floor, to support an unconstitutional plan, an unlawful plan. I stand today with my constituents and I support a strong, good and most important, a constitutional educational funding plan, and urge you to do the same. Thank you.

(The Chair recognized Sen. Bragdon to speak.)

SENATOR BRAGDON: Thank you, Madam President. I rise against the bill, though I again give thanks to those who have worked on it to try to improve it. I, like Sen. Kelly, would be happy to vote for a constitutional plan; however, I would have to disagree with Sen. Janeway that it's a fundamentally sound plan. I think it could be much better in terms of its soundness and its treatment to some of the towns for the very reasons I pointed out on Thursday, and I will give again two examples of where these "cliffs" that have been put into the system cause a problem. Example No. 1, which I believe I mentioned last week, one of the towns I represent, New Ipswich, has a median family income 0.5 percent above the state average, roughly \$290 above the state average. They qualify for \$1.6 million per year of – oh, what do we call it, transitional aid or disparity aid, I can't remember which – they qualified for \$1.6 million. But because their average income is \$290 above the state average, they

get zero. So in the course of the two years that we're looking at for this little help that we're going to give them, that's \$3.2 million that they qualify for, they don't get. Oh, and by the way, we'll give them \$300,000 over the course of two years as a kind of a "Oops, our bad." That shouldn't happen. I think there are ways to smooth out those curves, to make some kind of a linear arrangement rather than a stepwise one. But the Town of New Ipswich, which is the 25th lowest in property value in the state, qualifies for \$1.6 million; they get zero because they're a few dollars over the state average.

Another example occurs in a school from another district with 2200 students. Under the targeting in this bill, if you're over 24 percent free/reduced price lunch, you get transition aid, or disparity aid twice as much as if you're under 24 percent. One school has 2200 students and a 24.7 percent of their students in free/reduced price lunch; they get \$4 million. If that percentage was a little bit less, they'd only get \$2 million. There's a \$2 million jump there that happens that is basically, if it were smoothed out, that would be more money available to help other towns that are hurt by these steps in the program. And finally, that school with 2200 students gets additional aid for all 2200 students, even though a quarter of them only qualify for free and reduced price lunch. I think there are things that can be done in these formulas to benefit some of these towns that are still getting hurt, and I therefore will be voting against this. Though, again, I think those who worked on it to try to improve it. It made a little bit of an improvement, but really it still has the same fundamental flaws it had before.

(The Chair recognized Sen. Fuller Clark to speak.)

SENATOR FULLER CLARK: Thank you very much, Madam President. Senate Bill 529 [sic] before us today still relies on the statewide property tax and donor communities as part of the costing funding formula. I had hoped to amend the bill in the Senate Finance to create a municipal opportunity aid grant program that would make donor communities whole. Unfortunately, it was not possible to do that at this time. I continue to believe that there are lawful ways to eliminate donor towns and preserve what is good about Senate Bill 539. If the bill passes today, I will continue to fight to eliminate the donor communities. And I will also work to pass a constitutional amendment to eliminate the statewide property tax and allow the State to target State Education dollars to schools that need such aid the most, as opposed to sending such dollars to communities who have the capacity to raise education dollars they need without state aid. For far too long our educational funding solutions have pitted community against community with the issue of donor communities and receiver communities pulling us apart as a state. Such solutions have failed to recognize that many property owners in donor communities can simply not afford this increase in property taxes, especially when such dollars go to other property-wealthy towns. As long as donor communities continue to be part of the education funding plan, as is in this bill today, I cannot support Senate Bill 529 [sic]. Thank you, Madam President.

(The Chair recognized Sen. Barnes for a question of Sen. Fuller Clark who declined to yield.)

(The Chair recognized Sen. Barnes to speak.)

SENATOR BARNES: Thank you very much, Madam President. My understanding is that there are – listening to Sen. Martha Fuller Clark, there are donor towns in this plan that we're going to be voting on. Is

that – somebody can nod their head and tell me if that's true or not? Sen. Fuller Clark is shaking her head "yes." My second comment that I'd like to make is, I thought I heard or read in the paper that Governor Lynch, our Governor, said he would not sign a piece of legislation that had donor towns in it. So why in the world are we sitting here, going to vote for something – we're not talking unconstitutional, but we're talking something that our Governor has gone on record as being against. So the Governor's going to veto. We pass this, it's going to be vetoed and you're going to get it back here. And I think Governor Lynch was quite clear he does not want donor towns. And if we pass this with donor towns, he's going to veto it. So I think we should keep that in mind before we vote. Our Governor, I'm sure, has given this a lot of great thought, and he's made a promise to the people in the donor towns, and in Sen. Fuller Clark's area, that he would not have that happen again. And with that, I will sit down. Thank you very much, Madam President.

(The Chair recognized Sen. Sgambati for a question of Sen. Janeway.)

SENATOR SGAMBATI: Thank you. I just want to confirm my understanding. And I'm certain of the statement that no one in this body would be totally happy with this plan unless every town in their district was made whole. But I'm trying to understand some of the disparity – not in the "disparity" aid formula – we gave people adequacy aid and adequacy grant that was developed in the bill. Then the second piece of disparity aid was intended to be a leveler for those communities that had more children and more families in poverty. And then the third element was the transition aid, that because the formula is based on different factors than past formulas have been, there were communities that lost significantly, even though it didn't look logical, and the transition aid was intended to soften that blow and allow communities to plan for the future; is that correct?

SENATOR JANEWAY: That is correct.

SENATOR SGAMBATI: And can I ask you, can you explain to people why the bases are so off and the results are so varying for towns of median incomes or lower incomes? Some lower-income towns, in fact, lose; some higher-income towns gain, and I think that's a question for everybody.

SENATOR JANEWAY: I think that would be a question better directed to the parents or father of the previous school funding, because that's where those current numbers came from, and that predates my institutional memory.

SENATOR SGAMBATI: So the starting point was an unconstitutional funding plan, and this levels out those and applies a standard formula.

SENATOR JANEWAY: Right.

SENATOR SGAMBATI: Thank you.

(The Chair recognized Sen. Letourneau to speak.)

SENATOR LETOURNEAU: Thank you, Madam President. I would like to begin by saying thank you to members of the Finance Committee and those who have worked hard to try to help my situation out. I understand that you had a huge task in front of you. However, I have to say that I don't know where that money's coming from, there's quite a bit of money that's involved here that I understand we don't have. But as the Senator that represents the district that takes the largest hit in this plan, of seven and a half million dollars from one town, 30 percent of its

funding, they gave me back 15 percent and they're going to take that away in two more years, doesn't make any sense. Because in two more years inflation's going to go up and the school funding in my district is going to be even more. We lost five percent last year, which is about a million and a half dollars, and half a million dollars a year before that. This is starting to add up to some pretty serious money from my community. But the seven and a half million dollar loss, it was \$4.80 per thousand on the tax rate, just imagine your town with that added on without anything else that's going on in town. With this help, with this amendment, that makes it \$2.40. It's still huge. I've seen people get into screaming matches at town meeting over 11 cents on the tax rate. This is huge for this Town of Derry, huge. I can't even – I can't even begin to tell you how huge it is. We've had the discussion, where do we make the cuts? Do we cut Music? Do we cut Arts? Do we cut Transportation? Or do we raise the taxes. I can't vote for the bill as it is, but I want to take heart in the fact that, as Sen. Kelly mentioned, that this is just the second step in a long road, and I believe she's correct; this bill is going to go through a few more rounds before it ends up back over here again, and we'll be having this discussion later in the Session. But for today I cannot support something that I know in two years is going to be taking another seven and a half million dollars out of our budget; can't do it. Thank you very much.

(The Chair recognized Sen. Gallus to speak.)

SENATOR GALLUS: Thank you, Madam President. I rise in opposition to this particular legislation. You know, it's kind of rewarding to see that this particular piece of legislation didn't start with a spreadsheet, as we always look at those spreadsheets. But of course as soon as the spreadsheets were out, Senate Finance got an amendment for transitional aid that basically took care of a few towns. I happen to disagree that basically this is a fundamentally sound bill. No one has yet to explain how we pay for it. It's an issue that I can't really support this particular bill until I find out where – you know, where the money is coming from. I think in the last few years we decided we couldn't support the "donor town" concept, and now we want to live with it. Someone said this morning, "We're in a full-blown credit crisis." How can anyone vote for this bill without a funding source. It's certainly beyond me. Tell me where the money is, and I can support education and support this piece of legislation. Until then, I cannot see how, in good conscience, any of us can support this bill. Thank you, Madam President.

(The Chair recognized Sen. Gatsas to speak.)

SENATOR GATSAS: Thank you, Madam President. I was going to ask a question of Sen. Janeway, but I didn't think it was fair because he hasn't been around this discussion for a long time. But I do happen to look at spreadsheets and kind of understand what they said and what they don't say. I look at this spreadsheet, which is Spreadsheet B, and I assume this is what the predicated amendments that came out of Finance deal with. Is that correct or incorrect? And I will just leave that as a question that somebody can address for me, because if these are the predicated spreadsheets that came out of Finance, because I'm looking at it and I'm a little confused. 'Cause Sen. Bragdon was talking about Spreadsheet A. Spreadsheet B is the amendment that I believe that people in Finance voted on yesterday at the conclusion of their day. I'll take you to the very first column on Spreadsheet B. And in this spreadsheet it talks about "equalized evaluation [sic] including utilities." I'm not too sure if the cur-

rent legislation changed it, because I'll take you to the spreadsheet that we voted on last week, and it says "equalized evaluation [sic] without utilities." So I'm not too sure whether we're using 169 million for the statewide property tax, or whether it was changed, because on this sheet it says 172 million without utilities. And I'll remind everybody that we already charge, at the local level with utilities, on the utility tax, it's six-sixty per thousand. So maybe somebody, if we are now including utilities at the statewide, we are now going to charge those utilities, or the utility property, somewhere around \$9.14, so somebody needs to stand up in this chamber and put a little clarity on where we're going. 'Cause I certainly don't understand, and if I don't understand, maybe Sen. Janeway wants to speak with it, but I don't know if he understands.

But I think when we talk about constitutionality, Sen. Foster very eloquently last week, read from the *Londonderry* decision, and I think in that decision it says somewhere that everybody needs to understand how you determine an adequate education. The underbelly of this bill is 74 pages long. To get to this one page, you need 74 pages to get there. You can't get there without it. There's nothing on this bill that tells you how you're going to get to what quintile or ratio or percentage anywhere, unless you have the underlying components. So if we think our constituents can look at this and understand and feel comfortable with how we're determining an adequate education, I don't know if that's constitutional, because again I say to you that in that ruling it says people need to understand it. It's impossible for anybody even in here, I think, to stand up and tell me why that number in the first column has changed. So if we don't understand how we changed it, how's somebody else on the outside going to understand? But, you know, if we left this bill in Finance for maybe another six days, we might have broken the one billion dollar number, 'cause we're 600 million from it now. I mean, excuse me, 6 million. We're at \$994 million that we're spending, and nobody has stood up to say how we're going to pay for it. We've got an education funding plan, but I think maybe Sen. D'Allesandro will speak to that subject in awhile. But I'm not too sure even his piece of legislation can fill this hole. So somebody needs to stand up and tell me why those two numbers are different and how they're allocated, and what are we truly telling our communities, 'cause I don't know if it's with utilities or without utilities, and I'm not too sure if the bill speaks on that. But we have a spreadsheet and the number is different. So I certainly invite somebody to stand up and tell me why it's different.

(The Chair permitted Sen. Janeway to respond to the question posed by Sen. Gatsas.)

SENATOR GATSAS: Well, I'll do it officially.

SENATOR JANEWAY: But you won't like the answer. (Laughter)

SENATOR GATSAS: I will only like the answer if you're truthfully telling me, and I'm sure you are.

SENATOR JANEWAY: The answer is, I would have to go to – I can't explain the difference, whether it's with and without, and I would have to go to LBA for help. However, it's possible that greater minds here could answer that question, but I cannot.

SENATOR GATSAS: Is there another taker? Thank you.

(The Chair recognized Sen. D'Allesandro to speak.)

SENATOR D'ALLESANDRO: Thank you, Madam President. I rise in support of the bill. I commend Sen. Janeway for his articulation of what

the Finance Committee did, a great asset to the Finance Committee, a great person to have working with us; to Sen. Estabrook, the time and effort spent on this legislation I think is indicative of what good public service is. And the kind of time and effort spent on this bill is something that as a Senate we should be proud of. We went through a process. Life is a process. This process began with defining “adequacy,” because that’s what the Court asked us to do, define “adequacy.” That definition was in place, we addressed the court order. The second aspect was to develop a methodology to cost what an adequate education costs. This is the second step in the process, that has been done. Has the process been vetted totally? No, we all know that. This process moves from this body to another body. That body will take a look at what we – the product that we have sent them, and will make its decisions; then that product will return back to this body and we’ll conference on it. But what did we have to do, what was our charge? To present something to the other body that was constitutional. And remember, the mandate was first dollar, last dollar. So the constitutionality was very important; we want to live within the confines of the constitution. This body also passed a constitutional amendment so that we would deal with disparity. As Sen. Barnes has so eloquently pointed out, there’s disparity. Well, we know that. You know, there’s disparity between the rich and the poor that’s existed forever. We want to try to correct that, and we thought the best way to do that was with a constitutional amendment. But the product you have before you is constitutional, there’s a methodology that’s in place, and we’re asking you to support that methodology and move it on to the House of Representatives. We have done what we could do here. Is there change? Sure. I can remember when 13 of us voted on a piece of legislation and three seconds later 13 voted on another piece of legislation. Never had a public hearing. Never was the constitutionality. We knew that a precursor of it had been unconstitutional, but 13 people voted on it and it flew out of here. As I said, like on Holy Thursday, it had wings; it flew out of here and went over to the other body. So we have a product, we’ve fulfilled the ingredients of the process. We have adhered to the process. The process is ongoing. Life is an evolutionary process, and that process will continue. So, Madam President, I ask the body to support the process and move us forward. Is everybody happy? I don’t think so. But, you know, I’ve never seen anything that made everybody happy. My father-in-law wasn’t happy when I married his daughter. (Laughter) Now, can you believe that? So there was perfection, but it didn’t satisfy my father-in-law. (Laughter) Thank you, Madam President.

(The Chair recognized Sen. Gatsas for a question of Sen. D’Allesandro.)

SENATOR GATSAS: Senator, were there any other amendments that we passed today that never had a public hearing?

SENATOR D’ALLESANDRO: We passed some four amendments. But I guess my answer: yes.

SENATOR GATSAS: So the reference that you were making about the 13 votes on a bill that didn’t have a public hearing, that’s kind of the way we do business in the Senate sometimes.

SENATOR D’ALLESANDRO: Well, that’s not really – that’s not really true, Senator.

SENATOR GATSAS: Well, you just told me we did it today.

SENATOR D’ALLESANDRO: But you’re talking about a consistent methodology that’s followed by the Senate. We try to always bring things into

the public venue. And the floor amendments that we passed had a public vetting because they were an embellishment of amendments that had a public hearing.

SENATOR GATSAS: Follow-up. How about amendments that came out of committees that didn't have a public hearing? That changed after the enacting clause.

SENATOR D'ALLESANDRO: Well, if they changed the date, that was okay. I don't think the date needs a public hearing. Thank you, Sen. Gatsas.

(The Chair recognized Sen. Downing for a question of Sen. D'Allesandro.)

SENATOR DOWNING: Senator, I know you're the chairman of the Finance Committee and you wouldn't let a bill come out of your committee unless you knew how it was going to be funded. And I want you, if you could, explain to us where these funds are going to come from.

SENATOR D'ALLESANDRO: I'll make every effort to do that in just a few moments, Sen. Downing.

SENATOR DOWNING: Thank you.

The question is on the adoption of Ought to Pass as Amended on SB 539-FN-L.

A roll call was requested by Sen. Barnes, seconded by Sen. Bragdon.

The following Senators voted Yes: Reynolds, Sgambati, Burling, Cilley, Janeway, Kelly, Gottesman, Foster, Larsen, DeVries, D'Allesandro, Estabrook, Downing, Hassan.

The following Senators voted No: Gallus, Kenney, Odell, Roberge, Bragdon, Clegg, Gatsas, Barnes, Letourneau, Fuller Clark.

Yeas: 14 - Nays: 10

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

Sen. Bragdon is in favor of Committee Amendment 1077s on SB 539-FN-L.

Recess/Out of Recess.

MOTION TO REMOVE FROM THE TABLE

Sen. Fuller Clark moved to have SB 348 removed from the table.

Motion adopted.

SB 348, relative to the certification of forensic counselors by the board of forensic counselors.

The question is on the adoption of committee recommendation of Refer to Interim Study.

(The Chair recognized Sen. Fuller Clark to speak to the legislation.)

SENATOR FULLER CLARK: I would like to speak to that. The bill came out of Finance with a recommendation of Interim Study. I believe that the reason for that was that there was no one at Finance to address the underlying intention of this bill, and to also point out to Finance that with the new fiscal note, it had no financial impact on the General Fund. I would like to speak to the underlying intention of the legislation. Should I do that at this time, or should I ask for the vote to overturn the recommendation of –

PRESIDENT LARSEN: Your first order of action is to vote down the committee recommendation of interim study.

The question is on the adoption of committee recommendation of Refer to Interim Study on SB 348.

Motion to Refer to Interim Study failed.

Sen. Fuller Clark moved Ought to Pass.

SENATOR FULLER CLARK: Thank you very much, Madam President. I would like to move ought to pass on SB 348. Senate Bill 348 authorizes a voluntary certification program for forensic counselors. Giving individuals who have received specialized training as forensic counselor professional recognition is good public policy and provides an incentive for more individuals to seek such training and would increase the number of professionals especially trained to deal effectively with members of our prison population. It has the support of the Commissioner of Corrections and, as amended, will add no increased cost to the General Fund. Thank you very much, Madam President. I hope that the Senate would join me in now voting Ought to Pass on Senate Bill 348.

The question is on the adoption of Ought to Pass on SB 348.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

MOTION TO REMOVE FROM THE TABLE

Sen. Downing moved to have SB 330-FN removed from the table.

Motion adopted.

SB 330-FN, relative to video lottery machines at certain pari-mutuel facilities.

The question is on the committee recommendation of Inexpedient to Legislate

(The Chair recognized Sen. Downing to speak to the legislation.)

SENATOR DOWNING: I'd like to speak to the bill, yes, Madam President. I rise to speak about one community in my district, which is Salem, and a business in that community. Rockingham Race Track has been a part of the community for over a hundred years. Salem has twice voted to allow additional gaming at the facility. This bill will bring back much-needed jobs and revenue to the community, as well as the State. Recently an article in a local newspaper cited that there was currently over a 20 percent vacancy rate in our commercial property in the community. This bill provides an existing business with the necessary tools to once again be competitive within its industry. Sen. D'Allesandro has stated that this bill will create 4,000 good jobs and bring \$1 billion of new construction to the state, both of which are badly needed. This bill would provide much needed funding for substance abuse programs, horse breeding programs, which in turn supports open space. Funds would also be available to address numerous shortfalls, provide much needed services to the citizens of this state. Thank you very much.

(The Chair recognized Sen. Burling to speak.)

SENATOR BURLING: Thank you, Madam President. Madam President, we need revenue. We have battered ourselves in this Senate over the last few months, trying to find ways to pay for essential services, to keep our infrastructure from falling down, to keep our schools functioning well, and we're just struggling. For years I have opposed the concept of gam-

ing as a resource, but this time 'round, it has caught my attention. To that extent, I tried to sit down the other day and write out the kinds of questions I would ask, so that I could understand how things would work, if this proposal were to pass. And these are the kinds of things – and I'd like to just put them on the record – that I would like to know.

I would like to know how we would value the sale of a franchise. I note from some of the media, particularly *The New York Times*, that other states have actually gotten into some trouble by under-valuing the franchises which they issued or sold and I would like to be sure that that's something that never happened to us. (Cell phone interruption) Of course it would be my phone that would go off – (laughter) – yeah, nice going. I would like to know about valuation. I would like to know about the concept of how we protect our population against the consequences of addictive behavior. Now, I don't want to debate that with anybody today; I want to accept it as a truth in human nature. What I'd like to know is, what would we do to deal with that in our small society. I would like to know about how we would measure the term of agreements. I realize that's a lawyer's concern, but a lot of attention needs to go to the issue of how long would we sell a franchise for; would it be a franchise lease? What would be the term? Under what terms could we, the State, repeal, rescind or terminate an agreement. I guess what I'm really saying is I would like to know, as we start this process – well, it's not the start, Sen. D'Allesandro's been heroically trying to work this idea for ten years. But I would like to know that we had counsel and advocacy, the best thought we can acquire, to answer the common questions that good corporate lawyers would pose for their clients if this were a simple commercial transaction. So with that, I will sit down. I would say to my colleagues that this has raised my interest and it certainly raised my sense of the need we all share to have revenue to pay for governance. We need the money, and I don't know how we're going to get it.

(The Chair recognized Sen. Barnes for a question of Sen. Burling who declined to yield.)

(The Chair recognized Sen. Barnes to speak.)

SENATOR BARNES: Thank you, Madam President. I was going to ask Sen. Burling if he listened to the radio this morning. The folks to the south of us who are a lot more liberal than we are, and who are in need of a lot more money than we are, in the Legislature, turned down their Governor's plan for casinos in the State of "Taxachusetts." I just wanted to know that if everyone in this chamber knew that. That was my question, Senator. I'm sorry that you were tired and couldn't stand up to take it. That's a joke.

(The Chair recognized Sen. Gallus to speak.)

SENATOR GALLUS: Thank you, Madam President. Sen. Barnes, since when have we followed Massachusetts?

SENATOR BARNES: We haven't.

SENATOR GALLUS: In trying economic times that we are in, with the budget and revenue projections that are in the process of imploding, and a new educational funding plan that calls for new revenues but no funding source, it is imperative that we all consider all proposals for revenue. SB 304 [sic] will certainly contribute new revenues that are nontaxpayer-based revenues, as well as thousands of new jobs being created in these turbulent economic times. I've got the wrong number down here. 330. We basically need a new infusion of cash and revenues

into the budget process. Our budget alone is in trouble. When we look at this new education funding plan and we're sitting around the table and we're discussing passing it, and yet we know we don't have the revenues to actually, you know, fully fund it, I think it's really a serious issue that we consider this particular type of infusion of new capital into the State of New Hampshire. And, of course, all of the jobs that it creates are very important to me in the North Country as well as to the Southern section of New Hampshire. We need this bill, and I ask your support, and I thank you very much.

(The Chair recognized Sen. Clegg to speak.)

SENATOR CLEGG: Thank you, Madam President. I used to be one of those people that used to be on the opposite side of Sen. D'Allesandro, because I didn't think at the time we needed a new source of revenue. But since we've spent a billion dollars, and since we have to cut, just from this year, 50 million, I look and I say: Where are we going to get the money? And I know some people say: Oh, look at the misery that gambling brings. Well, you know what? I don't see it. I see busloads of happy seniors waving as they go down the road to Foxwoods. (Laughter) I see a whole lot of happy people playing "Texas Hold'em" at a couple of the tracks. And they were all pretty happy. I see a lot of people go to Bingo. I also see that last week we passed a bill to allow the chambers of commerce to use gaming, gambling once again to raise money for their charities. I looked at Sen. D'Allesandro's idea that this would actually increase our jobs, and it would; there'd be millions of dollars that would come into the state, and there'd be new work opportunities for a number of people. And some of those jobs would be road jobs. One of the things I hear from a lot of the small road contractors is, with the state of the Highway Fund, they're all looking for something to do. One person I talked to said: I have 60 employees, I'm not one of the big guys, and it looks like I'm only going to bring half of them back. That means they need parking lots to do, new side roads to build; anything that will keep New Hampshire residents working. And then I look at the e-mails I get from the North Country. I have e-mail from people up there who say: Give me gaming. I'm not interested in your money. I don't want the money you think you have to send up here to pay me to stay home; I actually want something to do, I want to earn my dollars, I don't want anything for free. And when you talk about our neighbors to the South, there's the difference between New Hampshire and Massachusetts: we got a whole lot of people in this state that say why are we letting all those dollars go across the border when I could actually earn an honest living without having to work at a prison or a gas station.

The same paper that talked about Massachusetts turning down casinos also talked about, in a different article, the expansion of Keno. So if you look at what Massachusetts has that we don't have – a sales tax, an income tax, Keno, and a whole lot of people who still like to go to Rhode Island or go to Connecticut, and say we'll just keep expanding what we have. We can't expand what we have any more. Our \$30 scratch tickets are as far as we can go. So what are we afraid of? Every church that I can think of holds Bingo. Chambers of commerce are going to start hold gambling. I watched "Texas Hold'em" go on while I was at a chamber of commerce event in Salem. So what are we doing? And oh, by the way: I watched the lines when Powerball hit \$230 million. I wanted to actually get a gallon of milk and I couldn't get into the store. 'Cause nobody in New Hampshire gambles, right? So, let's be honest with ourselves. We got three methods to raise more money that we're not using. We can take

the gaming dollar that goes out of state, or we can attempt to be like Massachusetts and put in a sales tax. Of course once we put in a sales tax, we lose all the retail centers that we have on the border, because that's the draw for them to stay in business. Or we could do an income tax. And that won't help us, either, because an income tax is going to affect a lot of the businesses that are left here, that stay here because we don't have one, and they're going to walk away. So we either have to be honest with ourselves and say: A lot of this money's already leaving and we're not getting it; or say: We're going to tax you in some other method, because one way or the other the State of New Hampshire has to pay those bills that we create in the Legislature. Whether you voted yes or no for the spending, it happens, and you're just as responsible to pay the bill now as the rest of us. So I ask you to think again and understand that there's only so many places we can get cash; this one's already being done, it's nothing new in the State of New Hampshire, it's something my father did and my grandfather did – of course it was horses in those days – so let's not kid ourselves, let's just move forward. Thank you.

(The Chair recognized Sen. Barnes for a question of Sen. Clegg.)

SENATOR BARNES: Thank you, Sen. Clegg. Last week we sort of had this conversation on gambling that came up, and I believe I asked you the question, and the question was: Do we get any money from these "Texas Hold'em" games that you have gone to see down in Salem, when you were down there with a chamber of commerce meeting. And I think your answer was we get zero. My question to you is: Why don't we do something to get some of that money?

SENATOR CLEGG: Senator, that's exactly what we're doing with this bill; we're doing something to get all the gaming money that already exists in the State of New Hampshire.

SENATOR BARNES: No, you didn't understand. "Texas Hold'em." Not the slot machines, "Texas Hold'em." Why aren't we getting money out of "Texas Hold'em"?

SENATOR CLEGG: Senator, if we pass this bill, "Texas Hold'em" will be one of the events that they hold in these areas, and "Texas Hold'em" money will be some of the money we get.

SENATOR BARNES: Thank you, Senator.

SENATOR CLEGG: You're welcome.

(The Chair recognized Sen. Hassan to speak.)

SENATOR HASSAN: Thank you, Madam President. I'm pretty much where Sen. Burling is. I haven't looked at gambling as a serious option for us in the past. But I am also acutely aware of our current revenue situation, and I am acutely aware that while gambling does, indeed, cause social problems – and this is maybe where I differ a little bit with Sen. Clegg – not funding essential services creates its own kind of human misery that is just as real. And we are going to have to start making some choices in this state about how we want to proceed. We have an education plan that is constitutional, that is thoughtful, that could cost somewhat less money if we pass the constitutional amendment, but we don't know what will happen with that. We also know that whatever education plan we end up with, it will be our constitutional obligation to fund, so to the degree we have to use money to do that we will have less money for absolutely essential services in this state, essential services

that our most vulnerable and our working families and our children rely on. I have questions about Senate Bill 330, I think there are a number of things that need to be answered before we could go forward with a gambling plan in this state.

I have a town in my district that has a dog racing track, it's a good employer, it has voted for expanded gambling in the past. But I would need to understand, from any plan that we develop, how we're going to address the needs of all the local communities within a certain radius of wherever the expanded gambling exists. The Town of Kensington is very close to the Seabrook Dog Track. It, under this bill, doesn't get a chance to vote on whether Seabrook accepts gaming, but it should get at least some level of funds from the distribution of gambling, if we were to develop it. Similarly, I don't think that local communities should be able to adopt this by a simple majority. If it takes two-thirds to build a school in this state, it should take – I mean three-fifths to build a school in this state, it should take at least three-fifths for a community to decide to expand gambling. And finally, as I look at the bill, I have all the questions that Sen. Burling raised. I also have the questions about what the right amount of money is for us to insist it goes into substance abuse programs, not just to treat gambling addiction, which is real and terrible when it strikes, but also for other kinds of substance abuse. We have an increasing substance abuse problem in this state, including horrific problems with abuse of prescription drugs, and any plan we develop needs to really help us with the funding and treatment of those problems as well. So with that, I hope we will continue to talk about this possible revenue source. It may not be our only source, but we do need to have a discussion about how we are going to fund the things that we all know we need in this state and that the citizens of this state rely on. Thank you.

(The Chair recognized Sen. Letourneau to speak.)

SENATOR LETOURNEAU: Thank you, Madam President. I rise in opposition to the bill. And I hate to rain on some of my good friends' parade here, but gambling is not a panacea. Gambling is not going to solve our problems. Gambling has a lot of social costs attached to it that nobody is talking about. Slots will drain money from local small businesses. That's a fact. You put a casino in anywhere, or slot machines anywhere, people don't go bowling, they don't go to the movies, they don't go to the restaurants. All those small businesses will fold up and dry up and go away. You're going to have increased crimes. And this is a matter of record across the country: you're going to have domestic crimes, aggravated assault, sexual assault, larceny, burglary, auto theft, and last but not least, political corruption. Who in this room would ever get elected once gaming is approved in this state, unless they approved gaming. Who would get the money to get elected. It destroys families. You talk about people going out of state spending their money. We've all been to Vegas, we've all been to Atlantic City. But you have to plan to go there; you don't stop there on the way home and spend your paycheck. This will damage tourism. Our state is dependent on tourism. People come here with their families. You put slots in, you put casinos in; that all changes. It also opens up the tribal loophole. Federal legislation, federal law says if you allow that to happen, then the tribes can also do it and they don't pay taxes. And you have to start making some kind of arrangements there.

We heard from our previous speaker about the nonprofits having Bingo and "Texas Hold'ems," and all kinds of games of chance. Those will also dry up. And so the nonprofit charities will suffer greatly. Who's going to

take care of the charities when there's no more – nobody's going to Bingo games. Nobody's talking about that. Also another thing people are not talking about in this economy: gaming revenues are down around the country. And I know that these profits that everybody's talking about is probably greatly exaggerated. Nobody says – they're talking about millions and millions of dollars, but where does that money come from? It doesn't come from heaven. It comes from people taking it out of their pocket and put it in that slot machine. Who do you think wins on that? I may have been born in the morning, but I wasn't born this morning. I could tell you that those dollars are not coming from heaven. And I'm not taking any questions. Thank you.

(The Chair recognized Sen. Fuller Clark to speak.)

SENATOR FULLER CLARK: Thank you very much, Madam President. I rise in opposition to this bill. I would second many of the points that Sen. Letourneau made. I think it would also be important to turn our attention to the study that was done in the House Ways and Means Committee, and they showed that these promises of over \$400 million in annual revenues are not really what will happen. They analyzed and said that without Massachusetts casinos, we could get about \$200 million a year that would decline to somewhere between a hundred and fifty and a hundred and seventy-five million within the next five to ten years; that with Massachusetts casinos that we would get less than a hundred million dollars per year. And also to recognize that the type of gambling that we're talking about here in New Hampshire is not going to be competitive with the Foxwood-type destination resort casinos, and those people are still going to continue to go to Connecticut. And so we're going to not actually address the issue of stopping that loss of moneys going out of the state. We also know that currently casino revenues have been slipping nationwide; they have been down about ten percent, both in Connecticut and Atlantic City, over the last year. And in addition to that, the new casino that opened up in Rhode Island just defaulted last week on its debt payments. So this is not the rosy panacea for the future of bringing additional dollars into the state. It's also important to realize that the cost of managing the social damage with expanded gambling will also have a huge toll on our General Fund. And finally, we will, by the introduction of gambling, impact very seriously on our tourism business and on our Rooms and Meals revenues which is the second largest source of revenue in the state. Just imagine a casino going into the Mount Washington Hotel and think what would happen to all the surrounding small businesses, restaurants and other tourism amenities. They will lose their customers, they will go out of business, and they will lose those dollars in our Rooms and Meals Tax.

I'd like to just tell you a story about Natchez, Mississippi. Several years ago, Natchez, Mississippi was convinced to adopt gambling. They gave up their site for the Delta Queen, which was the parking lot for the Delta Queen, and allowed to have a major casino built there. And within four to five years, almost every major entertainment business in Natchez closes. Because what was happening was that all of the tourists and all of the surrounding residents of the communities no longer patronized those restaurants, no longer patronized those tourism activities; they lost the money coming in from the Delta Queen, because the Delta Queen no longer docked there, and instead they were lured to the casinos by free meals, cheap overnight stays, and it completely devastated the economy of that community. That is what we could be putting at risk for the entire State of New Hampshire. This is not going to provide us

the revenues that we need, and I am opposed to moving forward with gambling as a solution for the State's need for additional dollars. Thank you, Madam President.

(The Chair recognized Sen. Gatsas to speak.)

SENATOR GATSAS: Thank you, Madam President. Oh really? Quote: "Corruption in government always accompanies legalized gambling," end of quote. Quote: "If more and more gambling is to be the official state policy, then we shall reap increased crime and corruption and social unrest in New Hampshire," end of quote. Quote: "If it (the State) depends on too much of this kind of revenue, its dependency has serious moral significance," end of quote. Sound familiar? These are among the many doom-and-gloom predictions given during the Senate debate on House Bill 47, April 16th, 1963, which established the first state lottery by allowing the sale of sweepstakes tickets. And that comes directly from the *Senate Journal*.

Interesting other piece of fact: "Pentagon finds no significant harm from slot machines at overseas bases. The military operates about 8,000 slot machines at 94 bases and other posts all overseas. The report said that the Department will take new steps to make sure access to the machines is restricted only to people 18 and over who are eligible to participate in military recreational programs. The report said the military personnel stationed at overseas bases that offer slot machines actually experienced fewer instances of financial problems than those do stationed in the United States. The report offers no theory or reason why." There's a whole bunch of other quotes here that I could give you. But to sit here and say "political corruption" would be here because of video lottery is wrong. I don't think it's a statement we should say, although that's been said before. And '63 is some 45 years ago, and I don't remember any politician being indicted because of corruption 'cause of the lottery system. Thank you, Madam President.

(The Chair recognized Sen. Clegg for a question of Sen. Gatsas.)

SENATOR CLEGG: Sen. Gatsas, one of the comments that were made was that if we allowed gambling in, the Indian tribes would suddenly have the right to build and they are tax-free. But since you have to have an Indian tribe that's federally recognized, and they have to have tribal lands in the State of New Hampshire, can you tell me how many we have that have that designation in New Hampshire?

SENATOR GATSAS: Senator, I saw a couple driving up this morning that were digging on the banks of the Amoskeag to try and find that land. No, there are none.

SENATOR CLEGG: There are none.

SENATOR GATSAS: That was a joke.

SENATOR CLEGG: Follow-up? Senator, I also heard how gambling breaks apart families, but if I've read all my information that's come in, isn't the biggest thing that breaks family up, alcohol and alcohol addiction?

SENATOR GATSAS: That's a main reason, yes.

SENATOR CLEGG: Thank you, Senator.

(The Chair recognized Sen. D'Allesandro to speak.)

SENATOR D'ALLESANDRO: Thank you, Madam President. And to my colleagues, it's been a long, exhausting debate, and I appreciate your willingness to listen to me at this late hour. And I apologize if I go lengthy,

I'll do my best to be as succinct as possible. Sixty years ago, Robert F. Kennedy announced for the presidency of the United States. And he said when he announced: "Some men see things as they are and ask, 'Why?'; I dream things that never were and say, 'Why not?'" I want you to think about that. And I want you to think about the framing of this piece of legislation as an economic development tool and a job creation package. Now, one of my colleagues talked about a casino in Mississippi that failed. I just thought I'd bring to her attention that Bear Stearns failed on Sunday, and they were a billion-dollar deal, and they sold for two dollars. Do you know how many people got hurt by that? Just a few ... million. So to say that gaming is the center of negativity is a misstatement. It is a misstatement. We are at a point where this state has an opportunity to provide economic development and to provide jobs. I have a letter about the Town of Belmont. The Town of Belmont, in a voice vote, supported the expanding of video lottery at their racetrack. They employ 60 people. With the addition of the video lottery, they would employ 500 people. They would invest in their facility \$150 million. They would provide construction jobs for between 500 and 800 workers over the next 16 to 20 months. I mean that's what we're talking about today. We're talking about an opportunity for economic recovery at a time when the economy's down, and we're talking about jobs when we need jobs. And in case we haven't looked at it, we lost 60,000 jobs last month, nationwide. If for two quarters in a row the GNP doesn't grow, you're in a recession. We're in a recession. This is an opportunity for us to rekindle an economy. Now, I'm not going to go on and on, because you've heard it all from my colleagues. Many eloquent statements were made, both for and against. You have to devour these, you have to take them, you have to decide which way you're going to go on this particular issue. But when asked to be creative, you bring something to the table. And as I said to my colleagues last week and I say again, if they have other ideas, please bring them forward. Because as Jerry McGuire said, "Show me the money." And I am showing you the money. This program will bring in about \$350 million a year. I'm sorry Sen. Burling isn't here, but I'll answer his questions in absentia. The value of a license is the value you people are willing to pay. Our licenses would bring in about \$60 million upfront. Licenses in Pennsylvania sold for \$50 million a license. That's number one. What would we do about bad behavior? We have a portion of our bill that allocates dollars to deal with this situation. We have always been very proud of our state police and their ability to do a good job monitoring these situations; they would be entrusted with that responsibility. How do you measure the term of an agreement? You measure the term of an agreement by a willingness to come up with the upfront money and given a period of time for them to get something in action and productive. We have chosen a term of five years. Delaware had a sunset provision in their law. We could put a sunset provision in our law. But it seems to me if you're going to invest 25 or 50 million upfront, and you're going to put a half a billion dollars into construction, you should have at least a five-year license before you have to renew it. In the State of Massachusetts the Committee on Finance in the House of Representatives – and it was a joint committee between the Senate and the House – voted 10-9. Ten-9. That's a thin margin, 10-9. Every Senator voted for the gaming proposal, some Representatives voted against the proposal. That's their right. We've never followed Massachusetts anywhere. Actually, I left Massachusetts to come to New Hampshire: wonderful day in my life. And, you know, New Hampshire has supported

me. And I'm – as they say, "That's my story and I'm stickin' to it." I say this to you: We have an opportunity to do something that makes good sense. We will teach our dollars to make good sense. It's something that we ought to think about. In rummaging through my materials last night, I found a picture of Gene Chandler and I that was on the cover of *New Hampshire Business Magazine*. I had Gene Chandler when he was 13 years old as a student at Kennett High School. I taught him basic math. So let me tell you, Gene Chandler was then Speaker of the House, I was a lowly Senator. I brought a bill forward, we discussed it, it didn't make the grade. But I will never stop trying. Thank you, Madam President.

(The Chair recognized Sen. Clegg for a question of Sen. D'Allesandro.)

SENATOR CLEGG: Sen. D'Allesandro, I actually have two questions. My first one was, there was some concern about social programs for problem gamblers. And when I was at the track down at Rockingham they explained to me that there are no gambling programs available in the State of New Hampshire and that they're always on the lookout for somebody they believe is having a problem. And they had to refer all of their problems to Mass., because Mass., with their Keno and everything – if we pass something in New Hampshire, would we require that they take some of their profits and use it for those social problems?

SENATOR D'ALLESANDRO: Absolutely. Yes.

SENATOR CLEGG: And follow-up question? My other question is, I know that some of my colleagues think it's okay to gamble, and if we put in gaming that the money for the charities would dry up. Do you have any idea how much money the charities actually get?

SENATOR D'ALLESANDRO: That's a great question, and I don't think anybody has that answer.

SENATOR CLEGG: May I follow up? But isn't it a percentage of something like –

SENATOR D'ALLESANDRO: Yes.

SENATOR CLEGG: – 25 percent.

SENATOR D'ALLESANDRO: Thirty-five percent.

SENATOR CLEGG: Thirty-five percent.

SENATOR D'ALLESANDRO: Yes.

SENATOR CLEGG: So the rest of the money stays in. Can you tell me if either side of that, the charity or the person that puts it on and gets the other 65 percent, do they have any kind of a social program for people who have gambling problems?

SENATOR D'ALLESANDRO: None whatsoever.

SENATOR CLEGG: Thank you.

(The Chair recognized Sen. Gatsas for a question of Sen. D'Allesandro.)

SENATOR GATSAS: I'm going to give you a quote, and the quote is: "No one has to buy a sweepstake, or gamble, if it's against his principles, or if he doesn't want to. New Hampshire residents are for voluntary taxation as opposed to involuntary taxation." End of quote. Can you tell me who said that in 1963?

SENATOR D'ALLESANDRO: Was it John King?

SENATOR GATSAS: William Loeb.

SENATOR D'ALLESANDRO: Oh. God rest his soul, William Loeb. Thank you. (Laughter) Another one of my great backers.

The question is on the adoption of the motion of Inexpedient to Legislate on SB 330-FN.

MOTION TO TABLE

Sen. Gottesman moved to have SB 330-FN laid on the table.

Motion adopted.

LAIID ON THE TABLE

SB 330-FN, relative to video lottery machines at certain pari-mutuel facilities.

SB 365, relative to testing for lead toxicity in children 4 years of age or younger. Health and Human Services Committee. Ought to Pass with Amendment, Vote 4-0. Senator Janeway for the committee.

Sen. Estabrook, Dist. 21

March 11, 2008

2008-0975s

01/09

Amendment to SB 365

Amend the title of the bill by replacing it with the following:

AN ACT relative to the commission to study childhood lead poisoning prevention laws, policies, and standards in New Hampshire.

Amend the bill by replacing all after the enacting clause with the following:

1 Commission to Study Childhood Lead Poisoning Prevention Laws, Policies, and Standards in New Hampshire; Duty Modified. Amend subparagraph I(a) of 2007, 293:12 to read as follows:

(a) The efficacy of current laws, regulations, education and certification standards, and clinical protocols ***including statewide universal screening*** in reducing the exposure of children to lead hazards.

2 Effective Date. This act shall take effect upon its passage.

2008-0975s

AMENDED ANALYSIS

This bill modifies a duty of the commission to study childhood lead poisoning prevention laws, policies, and standards in New Hampshire.

SENATOR JANEWAY: Thank you, Madam President. I move that Senate Bill 365 ought to pass with amendment. As amended, this bill expands the duty of the previously established commission to study childhood lead poisoning prevention laws, policies and standards in New Hampshire. The Committee heard extensive testimony in support of the Senate Bill 365 as introduced, and we agree with many of the concerns addressed by the bill. However, the Committee felt that to test all children four and under was not wise or cost-effective. Elevated levels of lead are not evenly distributed across the state. Testing should continue to be focused on the areas of greatest risk. The Committee thus amended the bill. They felt the matter of testing would be better handled by the established commission. Therefore, please join the Health and Human Services Committee and vote Senate Bill 365 ought to pass with amendment. Thank you very much.

(The Chair recognized Sen. Gallus to speak.)

SENATOR GALLUS: Thank you, Madam President. I would ask that you vote down the committee amendment and pass the original bill as introduced. If we are truly concerned for lead toxicity in children, the only true protection is the testing of our children. The original bill provides that protection. I ask you again to vote against the amendment and pass the bill. And I would ask for a roll call.

(The Chair recognized Sen. Gatsas to speak.)

SENATOR GATSAS: Thank you, Madam President. I certainly applaud the commission or study committee that's been listening to this work. I was fortunate enough to testify in front of them. And preceding me were two gentlemen from Rhode Island who talked about testing. The issue that's before us is about protecting the children's lives. It doesn't need to be studied, it doesn't need to be looked at. There's a problem. There's only one way to correct that problem. Not by targeting areas, because that child that could be in a wealthy community, an untargeted area, could have found one of those imported toys from China, put it in his mouth, and gets lead poisoning. I don't know what the problem is that we don't want to test children. 'Cause anybody will tell you that's the only way that you can find out if a child has a problem. We heard – last Session we dropped what the levels of toxicity would be in a child's blood, before we went in and told the landlord: You gotta fix the lead paint problem. There's only one problem. Maybe we could have prevented that two years before and not had the child have a severe problem. Why don't we want to test? Nobody wants to give me an answer, other than maybe ... it's one of our ideas. And that would be a wrong thing to do to children. They shouldn't be partisan. We're here to help all children. The children that come here from overseas, that don't understand or don't have parents to tell 'em they shouldn't be biting the woodwork in an apartment, be careful of the dust on the floor. This is about children. This is about how we best protect them.

We're not talking about a test that's a hundred thousand dollars. We're talking about tests for every child that goes to a doctor for their shots, for their checkups, until age four. I don't know what the problem is that we don't want to test these kids. There's such a pushback, it confuses me of why. Do we want to study it? Do we want to make sure that there's something out there that a landlord has to fix in his apartment, which may have never caused the problem with the child in the first place. It could have been in a brand new apartment and that toy that came from China. Why did we take all the toys off of the market that one of the biggest toy makers in the country had offered, Mattel? Why? We took 'em off for a reason: they were hurting our children, there was a possibility that the kids might get lead paint poisoning. We didn't say: Well, let's see what the level of toxicity is before we take these off the market. We did it immediately. I mean, it's very crucial to test these children. Nobody knows what the blood level is until that child has a serious problem. And then we want to blame the landlord and tell him he's got to fix his apartments and maybe spend \$30,000 a unit to fix 'em. When possibly that child developed lead poisoning three years before in a different apartment, but we never tested him. There is no reason why we wouldn't test children. We're protecting 'em. And if we don't want to protect them, this amendment does nothing to help children. It just says we'll look at it and the commission will come back with some ideas later. Well, we all understand that that "later" is sometime next year.

And that's wrong. That's wrong, to leave children in jeopardy because we don't want to test 'em. And nobody has given me a good reason of why not to test them, even when I was in that Committee and people were asking me the question. Most of 'em in that room were agreeing that we should test children. Now, is it because no recommendation has come out of there? The Committee could have come out with a recommendation; they knew this legislation was here. And there are people that sit on that committee that have called me and don't understand why they weren't asked for a recommendation to come before this body before that legislation came out today. Thank you, Madam President.

(The Chair recognized Sen. Hassan to speak.)

SENATOR HASSAN: Thank you, Madam President. I rise in support of the committee amendment. I serve with Sen. DeVries on the commission that Sen. Gatsas has just referenced. A couple of things. Just on Friday at our last meeting we did have an expert come in who tells us that with all the study going on concerning lead paint poisoning, it is increasingly clear that the red herring of toys from China is just that, a red herring. The majority of lead paint poisoning happens in homes, it happens in rental units, and it happens in homes and buildings of a certain vintage when lead paint was used. Our commission is taking seriously the issue of whether there should be universal testing. But we all have to understand the Center for Disease Control does not recommend universal testing. The reason being that you spend a lot of effort on trying to perfect universal testing in areas where there is almost no chance of a child having lead paint poisoning because of where they reside and the age of the housing they reside in. And we can spend our resources that way, focused on a population that statistically will not have lead paint poisoning. Or we can take our resources and focus on the children who are at risk. There is science to this, there is social policy to this. We are learning some states have universal testing, but they have far more sophisticated and expensive programs than we do to complement that universal testing. Some states do not. And the results in both models appear to be very good. So we need to think this through, we need to use our resources as effectively as we can. And, yes, every single person in this body, every single person in this gallery, every single person in the House, every single person in the State House, and every citizen in the State of New Hampshire cares about children. Thank you, Madam President.

(The Chair recognized Sen. Gatsas for a question of Sen. Hassan.)

SENATOR GATSAS: Sen. Hassan, can you tell me why the biggest toy-maker in America took the "red herring" off the market?

SENATOR HASSAN: Because lead is not good for children. And because those – my understanding is that because those toys are now off the market, this is not something that has nearly the statistical likelihood of causing poisoning as housing does. In a perfect world, if you want to increase the state budget so we can test everybody, and you want to find a revenue source for it, and you want to make sure that every single person is healthy in every single way, you can do that and that would be perhaps a very good thing. But we have limited resources, we have good science to back up what we're doing, and we will continue to discuss this in the lead paint commission because your bill raises a very good question. Thank you.

SENATOR GATSAS: Follow-up.

SENATOR HASSAN: I think I'm done with questions. Thank you very much, Madam President.

(The Chair recognized Sen. Gatsas to speak.)

SENATOR GATSAS: I guess until we find out where every "red herring" is, we're not too sure what other toys may be pulled from the market. And we're not too sure whether those children will be affected by those toys that they had as the "red herring." I think it's imperative, and for somebody to sit here and say we don't have the money to save a life? Every one of those children go to the doctor basically on a monthly basis, with insurance, and are tested for whatever else they're looked at for. They're given shots, they're given everything to age four. So why we wouldn't include having a doctor taking a look at a blood test that says you've got paint, you've got lead paint in your system, we need to take a look at it. So I think it's imperative that if we're looking to protect children, as Mattel did, taking the "red herrings" off the market, then we should pass a bill that tests children today. We don't need to wait for a commission to tell us, or a study to tell us; we know there's a problem today. They aren't going to tell us any different than what I heard in that commission that day. You need to test children. Thank you, Madam President.

(The Chair recognized Sen. Estabrook for a question of Sen. Gatsas.)

SENATOR GATSAS: Absolutely, Senator. I'm never afraid of a question.

SENATOR ESTABROOK: It's not a question of fear. I was just wondering if you're aware that the New Hampshire Medical Society supports the Committee's position, and believes that it is premature to move to universal testing at this time, and that they're the one seeing the children and perhaps their position should be listened to.

SENATOR GATSAS: Are you looking for an answer?

SENATOR ESTABROOK: Whether you're aware the Medical Society believes that the decision to move forward to universal testing is premature.

SENATOR GATSAS: I'm not concerned with – we can't depend on every recommendation that comes from every society. The reason being is that a child's life may be at risk. And I don't think that they want to see that child's life at risk.

SENATOR ESTABROOK: No, I doubt they do, –

SENATOR GATSAS: Thank you.

SENATOR ESTABROOK: – since they've taken an oath to not – to be guardians of children's health. Thank you.

The question is on the adoption of Committee Amendment 0975s.

**A roll call was requested by Sen. Gatsas,
seconded by Sen. Barnes.**

The following Senators voted Yes: Reynolds, Sgambati, Burling, Cilley, Janeway, Kelly, Gottesman, Foster, Larsen, DeVries, D'Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Kenney, Odell, Roberge, Bragdon, Clegg, Gatsas, Barnes, Letourneau, Downing.

Yeas: 14 - Nays: 10

Committee Amendment 0975s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 365.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

Sen. Kenney is in favor of SB 365 as amended.

SB 450, requiring the New Hampshire Citizens Health Initiative to make an annual report to the general court and to explore the possibility of creating a public insurance commission. Health and Human Services Committee. Ought to Pass with Amendment, Vote 3-1. Senator Fuller Clark for the committee.

Sen. Fuller Clark, Dist. 24

March 11, 2008

2008-0964s

01/09

Amendment to SB 450

Amend the title of the bill by replacing it with the following:

AN ACT requiring the New Hampshire Citizens Health Initiative to provide an annual summary to the general court.

Amend the bill by replacing section 1 with the following:

1 Summary Required. The New Hampshire Citizens Health Initiative shall provide an annual summary beginning on November 1, 2008 on the work of the Initiative and any important reports of the findings of the Initiative's work groups to the president of the senate, the speaker of the house of representatives, the chairpersons of the house commerce and health, human services and elderly affairs committees, and the chairpersons of the senate commerce, labor, and consumer protection and health and human services committees.

2008-0964s

AMENDED ANALYSIS

This bill requires the New Hampshire Citizens Health Initiative to provide an annual summary to the general court.

SENATOR FULLER CLARK: Thank you very much, Madam President. I move that Senate Bill 450 ought to pass with amendment. Senate Bill 450, before the amendment, required the New Hampshire Citizens Health Initiative to make an annual report to the General Court and explore the possibility of creating a public insurance commission. The amendment eliminates the request that the New Hampshire Citizens Health Initiative consider the possibility of creating a public health insurance commission and clarifies reporting requirements for the New Hampshire Citizens Health Institute [sic]. Please join the Health and Human Services Committee and vote Senate Bill 450 ought to pass with amendment. Thank you very much, Madam President.

The question is on the adoption of Committee Amendment 0964s. Committee Amendment 0964s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 450.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

Sen. Kenney is in opposition to SB 450.

Recess/Out of Recess.

SB 527, relative to adult involvement for minors seeking abortions. Health and Human Services Committee. Ought to Pass with Amendment, Vote 4-1. Senator Sgambati for the committee.

Sen. Sgambati, Dist. 4

February 21, 2008

2008-0756s

01/10

Amendment to SB 527

Amend RSA 132:30, I as inserted by section 1 of the bill by replacing it with the following:

I. "Counselor" means a psychiatrist licensed under RSA 329:12, a psychologist licensed under RSA 330-A:16, a clinical social worker licensed under RSA 330-A:18, a marriage and family therapist licensed under RSA 330-A:21, a registered nurse or practical nurse licensed under RSA 326-B, a guidance counselor certified under RSA 21-N:9, II(s), or a health care assistant who has been trained to provide counseling under the provisions of RSA 132:31 and who works under the supervision of a licensed or certified provider or counselor as specified in this paragraph or in paragraph III.

Amend section 1 of the bill by deleting RSA 132:32.

SENATOR SGAMBATI: Thank you, Madam President. I'd like to speak to the committee amendment, and then later speak to the bill as amended. I want to present the amendment first because it has two important changes that I think are central to the bill. First, it allows trained employees and qualified employees of a clinic or office to provide counseling to a teenager who's seeking an abortion, if they act under the guidance of a certified professional. This change was made because a number of clinics have qualified employees who don't necessarily have certification, but who are especially talented when it comes to dealing with teenagers, and we want them to continue the work that they're doing today. That's the first provision. The second provision is the elimination of rulemaking. It was the last provision of the bill, of the original bill, had rulemaking submitted by DHHS. This was included as a drafting error from an old draft. The intent of the bill was always to rely on professional oversight, not on government agency oversight, regarding compliance with the bill's requirements. These two issues and items are very important to the bill, and I ask you to vote ought to pass on the committee amendment. Thank you.

The question is on the adoption of Committee Amendment 0756s.

Committee Amendment 0756s adopted.

Sen. Barnes offered a floor amendment.

Sen. Barnes, Dist. 17

March 18, 2008

2008-1051s

01/09

Floor Amendment to SB 527

Amend the title of the bill by replacing it with the following:

AN ACT relative to parental notification.

Amend the bill by replacing all after the enacting clause with the following:

1 New Subdivision; Parental Notification Prior to Abortion. Amend RSA 132 by inserting after section 28 the following new subdivision:

Parental Notification Prior to Abortion

132:29 Definitions. In this subdivision:

I. "Abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device intentionally to terminate the pregnancy of a female known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove an ectopic pregnancy or the products from a spontaneous miscarriage.

II. "Commissioner" means the commissioner of the department of health and human services.

III. "Department" means the department of health and human services.

IV. "Emancipated minor" means any minor female who is or has been married or has by court order otherwise been freed from the care, custody, and control of her parents.

V. "Guardian" means the guardian or conservator appointed under RSA 464-A, for pregnant females.

VI. "Medical emergency" means that condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of major bodily function.

VII. "Minor" means any person under the age of 18 years.

VIII. "Parent" means one parent of the pregnant girl if one is living or the guardian or conservator if the pregnant girl has one.

132:30 Notification Required.

I. No abortion shall be performed upon an unemancipated minor or upon a female for whom a guardian or conservator has been appointed pursuant to RSA 464-A because of a finding of incompetency, until at least 48 hours after written notice of the pending abortion has been delivered in the manner specified in paragraphs II and III.

II. The written notice shall be addressed to the parent at the usual place of abode of the parent and delivered personally to the parent by the physician or an agent.

III. In lieu of the delivery required by paragraph II, notice shall be made by certified mail addressed to the parent at the usual place of abode of the parent with return receipt requested and with restricted delivery to the addressee, which means the postal employee shall only deliver the mail to the authorized addressee. Time of delivery shall be deemed to occur at 12 o'clock noon on the next day on which regular mail delivery takes place, subsequent to mailing.

132:31 Waiver of Notice.

I. No notice shall be required under RSA 132:30 if:

(a) The attending abortion provider certifies in the pregnant minor's medical record that there exists a medical emergency, as defined in RSA 132:29, VI; or

(b) The person or persons who are entitled to notice certify in writing that they have been notified.

II. If such a pregnant minor elects not to allow the notification of her parent or guardian or conservator, any judge of a court of competent jurisdiction shall, upon petition, or motion, and after an appropriate hearing, authorize an abortion provider to perform the abortion if said

judge determines that the pregnant minor is mature and capable of giving informed consent to the proposed abortion. If said judge determines that the pregnant minor is not mature, or if the pregnant minor does not claim to be mature, the judge shall determine whether the performance of an abortion upon her without notification of her parent, guardian, or conservator would be in her best interests and shall authorize an abortion provider to perform the abortion without such notification if said judge concludes that the pregnant minor's best interests would be served thereby. Access to a judge for the purposes of this paragraph shall be afforded such a pregnant minor 24 hours a day, 7 days a week. All proceedings conducted pursuant to this section shall be confidential.

(a) Such a pregnant minor may participate in proceedings in the court on her own behalf, and the court may appoint a guardian ad litem for her. The court shall, however, advise her that she has a right to court-appointed counsel, and shall, upon her request, provide her with such counsel.

(b) Proceedings in the court under this section shall be confidential and shall be given such precedence over other pending matters so that the court may reach a decision promptly and without delay so as to serve the best interest of the pregnant minor. In no case shall the court fail to rule within 7 calendar days from the time the petition is filed. A judge of the court who conducts proceedings under this section shall make in writing specific factual findings and legal conclusions supporting the decision and shall order a record of the evidence to be maintained including the judge's own findings and conclusions.

(c) An expedited confidential appeal shall be available to any such pregnant minor for whom the court denies an order authorizing an abortion without notification. The court shall make a ruling within 7 calendar days from the time of the docketing of the appeal. An order authorizing an abortion without notification shall not be subject to appeal. No filing fees shall be required of any such pregnant minor at either the trial or the appellate level. Access to the trial court for the purposes of such a petition or motion, and access to the appellate courts for purposes of making an appeal from denial of the same, shall be afforded such a pregnant minor 24 hours a day, 7 days a week.

132:32 Penalty. Performance of an abortion in violation of this subdivision shall be a misdemeanor and shall be grounds for a civil action by a person wrongfully denied notification. A person shall not be held liable under this section if the person establishes by written evidence that the person relied upon evidence sufficient to convince a careful and prudent person that the representations of the pregnant minor regarding information necessary to comply with this section are bone fide and true, or if the person has attempted with reasonable diligence to deliver notice, but has been unable to do so.

132:33 Severability. If any provision of this subdivision or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the provisions or applications of this subdivision which can be given effect without the invalid provisions or applications, and to this end, the provisions of this subdivision are severable.

2 Effective Date. This act shall take effect upon its passage.

2008-1051s

AMENDED ANALYSIS

This bill restores the parental notification law and adds a medical emergency exception to such law. The bill also affords the pregnant minor 24-hour access to a judge for waiver of notification.

SENATOR BARNES: I have an amendment, Madam President.

PRESIDENT LARSEN: You may speak to that as it's being distributed.

SENATOR BARNES: The amendment is 1051s. I want you to all know upfront that this amendment that I am presenting to Senate Bill 527 is exactly the same as Senate Bill 302 which was in Judiciary and which is a couple of bills after this one. The exact same bill. I also want my colleagues to know that last year we overturned a piece of legislation that was passed, and I'm going to read, if I may, for just a couple of pages here – well, not a couple of pages, a couple of lines – and I wanted you to also know that it hasn't been proofed. And it was said, by Sen. Foster who led the charge last year to overturn the bill. And part of what Sen. Foster said: "I was criticized by some for my tough questioning, particularly because I remember being frustrated that this expert refused to be frank and honest with the Committee. I inquired of her why we're being asked to pass this bill when one and nearly identical law in Colorado had been struck down as unconstitutional by the United States Court of Appeals for the Tenth Circuit. Like what became the New Hampshire law, the Colorado statute failed to contain a health exception that protected women and thus failed to meet constitutional muster." And that was a big part of Sen. Foster's speech that helped overturn that piece of legislation, in my opinion.

So, I said to myself: Sen. Foster is a very astute individual, and I think he has something there. So, in my amendment – and it's on line 23 of the first page, it talks about medical emergency. Well, let me back up just a couple of seconds, put it in reverse for a second. I put this bill in on the 11th of September. As soon as the bill was drafted, I took it upstairs to the second floor, and I went to our Governor, and I talked to him face to face, man to man. And I told him I have a hunch that a number of people have called his office and have a concern – I know some people from Manchester called me, I know they had some very bad things to say, some old-timers, they would never vote for Republican, but there was some Democrats they wouldn't vote because of this, but that's okay, that goes with the territory. And I said to the Governor, I said: You know, you're always talking about bipartisanship and here's an opportunity, Governor, for taking care of the health of the female in this piece of legislation, which Sen. Foster had a concern for, for taking care of that, and I would love it if you could help me get some of the Democrats in the Senate to go along with this, I'd like you to talk to them. So three weeks go by, and I said: Gee, I wonder why I haven't heard back. Well, I didn't talk to him personally on my visit back in three weeks, I got one of his staff members, and: Oh, the Governor is ... I don't know what the words were, "thinking about it," or what-have-you. But it's kind of interesting that on October 16th, Senate Bill 527 came alive, over a month after my piece of legislation. Kind of interesting, I thought that that wasn't a very bipartisan way to go, but that's okay, that's the way it went.

So what I'm trying to do is take care of that problem that Sen. Foster very articulately spread out as the help of a mother that isn't there. So if you look at 23 through 26, I think you will see that that takes care of what Sen. Foster was talking about. And I certainly hope that you folks can look at this. I know better, but I would hope you look at it anyway. Because I think it's the right thing to do. And I know you, probably some of you may think it's the wrong thing to do, and that's what goes on in here. But that's my story, guys and gals. And I think the parents of our children should have a say on what goes on. Sen. Sgambati's piece of

legislation is better perhaps than what we have now. But, you know, when I go out for an evening – it's not very often because I have to be in early because of my age, I guess, I gotta go to bed early – and I asked for a Schlitz and the restaurant I sit in, and the wait staff comes to me and says, "I'm sorry, Mister, we don't have Schlitz, we have Budweiser." Well, I don't take second best so I don't have a beer if they don't have Schlitz. So even though they tell me it's second best, I don't buy that Budweiser. So I cannot buy that second best, and that's the end of my talk, and thank you very much. And seeing some folks have not taken questions, I'm not going to take any questions, either; I'm going to keep going so we can get out of here before it gets eight, nine o'clock tonight and my wife will think I'm out doing something I shouldn't be if I don't get home.

(The Chair recognized Sen. Foster to speak.)

SENATOR FOSTER: Thank you, Madam President. Sen. Barnes, you must not drink very often. I don't think they brew Schlitz any more, but I – (laughter). Thank you, Madam President. I rise in opposition to this amendment. And as Sen. Barnes noted, it's identical to Senate Bill 302, so my remarks on that, should we get to 302 at some point this evening, will be incorporated here. The issue of whether or not to mandate parental notification for minors seeking abortions has been before this body, as Sen. Barnes noted, on many occasions in recent legislative sessions. And even though an enactment of a similar measure in 2003 led the state all the way to the U.S. Supreme Court, in a long and expensive four-year legal battle, and even though we thoroughly debated and repealed a similar law last year, here we are again today. And while I truly do not doubt the sincerity of the members who support this legislation, I think there are probably some other reasons why it's being presented here today; the same bill was presented over in the House, identical bill, it was killed. But, you know, here we are, and I'm going to give Sen. Barnes some of the honor that he gave me. The prime sponsor, when he admitted the legislation – brought the legislation forward to the Judiciary Committee, in introducing it, said the following: "Is it a political issue? Yeah, you're darn right this is a political issue. It's going to be a political issue in November. You're darn right it's going to be a political issue in November." That's a quote from the testimony. And I think the remarks about the Governor sort of emphasize that.

Now, we all know that abortion issues evoke a wide range of values and emotions among the members of the body. And the politics of abortion can rally activists on all sides of the issue. But even under the threat of political challenge, the majority of the Judiciary Committee on Senate Bill 302, and we would say the same thing about this legislation, thought that it would do more harm than good for the health and safety of our teens in this state. Do I think that parents should be involved in counseling and advising their children on the occasion of an unplanned pregnancy? As a father of three daughters, two of whom are teenagers, you bet I do. Do I think that all teens live in the type of family circumstances where that type of healthy communication and guidance is available in a supportive and safe way? Sadly, I don't. I know that it's not true for many young people. Do I think a teen living in such a difficult family circumstance should have the additional burden of navigating our judicial system and placing her future in the hands of a judge before she can have access to an abortion? No, I don't. And I do believe that a doctor or other medical providers should have the threat of criminal prosecution hanging over his or her judgment when deciding whether a teen is experiencing a medical emergency or what type of immediate care is in the best interest of his or her patient? No, I don't.

But in voting against this amendment I can tell you what I do believe. I believe that pregnant teens in New Hampshire should receive comprehensive information and counseling from a trained and supportive adult, and I believe that counseling should not only include thorough and informed consent about medical issues and pregnancy alternatives, but should also encourage young women who have not yet consulted their parents to do so, and if that is not possible, the counseling should encourage them to identify another responsible adult to provide the support and guidance. And those values are embodied in Senate Bill 527 as it's been amended. Regardless of how you feel about mandatory notification, I hope you will vote yes to support our teens with the adult involvement legislation that's before you.

But back to this amendment. During my legislative career, I've consistently rejected abortion restrictions that put the health and safety of New Hampshire women – in this case, our young women – at risk. I've consistently rejected legislation that unreasonably threatens our medical providers with criminal prosecution or civil liability for using their best judgment in meeting the needs of their patients. And I've consistently protected the rights of teens to receive confidential medical care, especially on the sensitive issue of reproductive and sexual health matters. As an attorney, I feel strong that it is important not to erode or undermine the constitutional rights of our residents, adults and teens. And I ask all of you to join me in preserving these values today by voting against this amendment. Thank you, Madam President.

(The Chair recognized Sen. Gatsas for a question of Sen. Foster who declined to yield.)

(The Chair recognized Sen. Gatsas for a question of Sen. Barnes.)

SENATOR GATSAS: Sen. Barnes, can you tell me what the ages are of a teenager?

SENATOR BARNES: A teenager starts at 13.

SENATOR GATSAS: And where does it end?

SENATOR BARNES: Nineteen.

SENATOR GATSAS: Thank you.

(The Chair recognized Sen. Kenney to speak.)

SENATOR KENNEY: Thank you, Madam President. I think this is my first time speaking today. I think I was looking at, if I had spoke of four or five of the bills that I wanted to, that we'd probably be about 6 o'clock right now, so. I'm going to be brief when it comes to this topic. First of all, I'm supporting Sen. Barnes' amendment, and I believe we need to stand up for parents and their rights to protect their children. There can be no better counselor than parents when it comes to making a decision with their daughter on a decision that could affect them for the rest of their lives. Now, when we got going with this parental notification back in 2003 and when it went to the Supreme Court, we all know that Chief Justice Sandra Day O'Connor simply said fix it in the lower court and it will be constitutional. And what she meant by that was to create the health exception, which I believe Sen. Barnes' amendment does that. If you look at the main course of the bill, you will see that under section 5 that basically the parent involvement can basically be avoided and taken out when it comes to the decision of whether a minor will have an abortion or not. And I think that's really the downfault [sic] of the counseling bill that Sen. Sgambati has

offered, is that it really does take out parental involvement. And what I believe, and what Sen. Barnes' amendment does, is keep the parents in with the decision-making with their young daughter when they're faced with the most critical decision in their life. I believe that we're moving in the right direction in the State of New Hampshire, that we need to have more adult supervision involvement, but I firmly believe it should rest with the parents. Thank you, Madam President.

(The Chair recognized Sen. Hassan to speak.)

SENATOR HASSAN: Thank you, Madam President. I rise in opposition to this floor amendment. I, like every parent in this room, and I trust every parent in New Hampshire, wants to be involved in the critical decisions that our children will need to make at critical times in their lives. And the instinct that is behind parental notification bills is an honorable instinct. We all want to do what's best by our children, and we all want to believe that we have the kind of relationship with our children that will lead us to a discussion at these moments of crisis. We also know as parents that often those relationships either don't exist or that the adolescents we are parenting don't believe they exist. One of the very hard things to understand is that even young people who have very good relationships with their parents sometimes like to withhold negative information because they don't want to disappoint those parents. The State of New Hampshire cannot change the teenage brain. Our obligation as parents, as much as it is important to be involved with our children, to help them, to counsel them, we have a higher obligation even than that, and that is to protect the health and safety of those children. And parental notification laws like this create barriers to access in a timely way; they can cause delays that can cause true medical harm to our young people.

I want to focus – I echo everything that Sen. Foster has already said so well, but I want to focus just a bit on the section of this bill that sets up a judicial bypass. Because early in my legal career, which began in the mid '80s, I participated in a judicial bypass system in Massachusetts. I was a lawyer, but what happened is teenagers, minors who were seeking abortions in Massachusetts, required parental consent, and if they felt they couldn't tell their parents, they had to find a lawyer who could help them go to court. And I will say that unlike the process outlined in this amendment and in Senate Bill 302, at least in Massachusetts the decision by the court was immediate that day. This bill, by the way, says the court can take up to seven days to decide whether the minor can get the abortion, and then if it denies the abortion, the appeal process will take another seven days: two weeks for the court to resolve probably one – *the* first if not one of the first crises that a young person has ever had in her life. My experience as an attorney for young women faced with an unplanned pregnancy and faced with a family situation which made them believe that they could not involve their parents taught me that the last thing a young person needs faced with this crisis is a bunch of lawyers. I mean we talk all the time about how there are too many lawyers and we involve lawyers in too many things, and now all of a sudden we want to involve a bunch of lawyers in counseling and private medical decision-making.

I will tell you that of the women I represented not a single one gave me a reason that wasn't valid for why she wasn't telling her parents. The one that stuck in my mind was: Well, my sister got pregnant a couple of years ago, my father beat the living daylights out of her – that isn't exactly what this young woman said – and threw her out of the house. I

thought that young woman was making a very reasoned decision about why she wasn't going to involve her parents in this very difficult decision. I found that the young women who came to me also had to circumvent school, their parents, other adults in their lives, because they were trying to keep the whole business confidential, but they had to find a way to come downtown to my law firm to meet with me and then find more time that they could get out of their school or home schedule to come back to court with me on another day. That judicial bypass system, as well intended as it may have been, encouraged young people to engage in further deception because they couldn't tell their parents. And at the end of the day, the lawyers involved, we all learned which judges would be respectful to the young person, quick in their decisions, and who would say yes. Because there was a group of judges who believed that either the minor was mature enough to make her own decision, or that terminating the pregnancy was in her best interest. And we learned who those judges were, and we took these young women there, and all the thing did, all that the system did was complicate an already very complicated situation and it did not add counseling and it did not add wisdom to the process. So for those reasons, among many others, I oppose this amendment, and I thank you and the Senate for your time.

(The Chair recognized Sen. Gatsas for a question of Sen. Hassan.)

SENATOR GATSAS: Thank you, Sen. Hassan. I can remember four years ago when this debate was going on that a number stuck out in my head, and that number was 17,000 judicial overrides in the State of Massachusetts. Can you tell me how many of those judicial overrides were not successful?

SENATOR HASSAN: If you are referring to bypasses –

SENATOR GATSAS: Bypasses.

SENATOR HASSAN: – as opposed to overrides, I don't know the statistics.

SENATOR GATSAS: Would you believe if the answer was two?

SENATOR HASSAN: Which would call into question, in my mind, Senator, the value of the process and the implications of the delays placed on the young women involved.

SENATOR GATSAS: Thank you.

(The Chair recognized Sen. Sgambati to speak.)

SENATOR SGAMBATI: Thank you, Madam President. I'll be very brief. It's important, as much as our view of New Hampshire is of positive families, not all of our teenagers are free of either sexual or physical abuse, and I'm certainly grateful that the amendment acknowledges that, because a pregnant teen should never have to turn to the father, to their father who's the father of their child and involve them in a decision; in my mind, those parents have given up their parental right. But there are those, I think the bill covers those who can't involve a parent; there are also young people who won't involve their parents, for whatever reason, legitimate or not, in our eyes. These teens are not in danger from their parents; they are in danger from their own panic, from their own impulsiveness. Some of them may be mature enough to walk through that decision alone; others are not. But if we restrict access to services, I believe that we invite tragedy. A teen in crisis who cannot turn to their parents, or won't turn to their parents for help, is ultimately a teen at risk. And for that reason, I ask you to vote this amendment ITL.

(The Chair recognized Sen. Letourneau to speak.)

SENATOR LETOURNEAU: This is difficult for me to talk about, and I consider it somewhat personal. But what we're talking about here is teenagers terminating pregnancies. Actually, what's going on is we're just killing children; that's what it really amounts to. The reason why we would like to see parental involvement so those discussions can happen, because many times, after this abortion takes place, later on in life these young women have major problems, psychological problems, and maybe could have avoided that if we could have made the right decision in the beginning. This state, we protect our pets more than we protect the unborn. I don't understand it. And I don't understand the opposition to it. I have never been able to figure out why people in this body, or that body across the way, are so opposed to protecting the unborn. Every one of us have children, grandchildren, and we love 'em. After they're born. But when you're carrying that child in your body, that's a real life that was given to you. I don't think it's right. That's why we were trying to slow the process down instead of running off to some abortion clinic and doing away with the sin that you may have created. Think about it, slow the process down. Nobody's going to – nobody's going to die over the fact that they might have to wait a week or two, and I don't think that takes that long. This isn't parental ... this is only parental notification; this isn't parental, uh ... the word I'm looking for, I get so wrapped up in this. The parent hasn't given their permission; they're just being notified, so they can have that discussion. I'm going to vote for Sen. Barnes' amendment, and I'm sorry to have to speak like this, but that's how strongly I feel about these unborn children. Thank you very much, Madam President.

The question is on the adoption of Floor Amendment 1051s on SB 527.

A roll call was requested by Sen. Barnes, seconded by Sen. Kenney.

The following Senators voted Yes: Gallus, Kenney, Roberge, Bragdon, Clegg, Gatsas, Barnes, Letourneau, Downing.

The following Senators voted No: Reynolds, Sgambati, Burling, Cilley, Janeway, Odell, Kelly, Gottesman, Foster, Larsen, DeVries, D'Allesandro, Estabrook, Hassan, Fuller Clark.

Yeas: 9 - Nays: 15

Floor Amendment 1051s failed.

(The Chair recognized Sen. Sgambati to speak.)

SENATOR SGAMBATI: Thank you. I'd like to speak to the bill as amended. As introduced, for all of its controversy, this bill actually had a very simple purpose, to safeguard the health and well-being of our young girls. The hearing yielded both support and criticism from pro-life and pro-choice, but in fact, this bill was directed at neither group. It is not about the "great divide" between us philosophically; it is intended only to ensure that care is provided to our teens and that support is given to them in a time of crisis. Under the provisions of the bill, a counselor would be required to provide objective information about a teen's choices, provide them with referral information for agencies that could help them to support their choice. When appropriate and safe, the counselor will encourage the child or the teen to talk to their parents and include a

parent or a family member in their conversation and decisions. But as we've just talked about, that's not always a safe option. The counselor, in turn, would then provide critical adult support during a difficult time. The only other requirement in the bill is that there is a signed statement that verifies, in fact, that the counseling has happened and it's taken place. Most clinics will tell you that these practices happen now and that this counseling happens now. This bill, in response to that, was drafted to reflect the best practices that are currently in place. My intent in bringing this forward was simply to codify these best practices.

But I can tell you in the case of three women who have contacted me since this debate started that it is not foolproof and the clinic procedures don't work a hundred percent of the time in doctors' offices around the state. A recent article spurred three women to call me at different times to say: I do not understand why they're saying that counseling is not needed, I went through this time with no one, or with very little support. They told of physical and emotional effects afterwards, impacts that had happened to a 14-year-old and a 16-year-old who had nobody in their corner. I believe that the State has a special obligation to argue. We talked about it here today. We debated bills that talk about what requirements they need for their health, we talked about their education, in dozens of bills that we hear every year; we act on that obligation to our children. The bill is not about limiting choice. It's not about placing obstacles in the path of young women. It is about making sure that a trained, responsible adult is involved in protecting their health and safety and in guiding their decision-making. The bill asks only that the teen review – a teen's options are reviewed prior to an abortion, and that it asks that they be provided support for their decision. It won't change the work of a good counselor. They will continue to do what they do today. It does not provide them with a script; it gives them areas that they need to cover that can be woven into the conversation. It asks only that they provide that support to teens. It assures that their needs are met, and it assures their parents know that if their teen can't or won't come to them, that there is a responsible adult, a professional, standing in their corner, protecting their needs and their interests.

This isn't an easy subject for any of us; it's not been an easy bill to work with. But the world doesn't happen in absolutes, the answers aren't easy; if they were, we wouldn't sit here year after year, dealing with a thousand bills, trying to find a path to a right answer. I'm asking you to consider one more bill that I believe is a different approach, and a protective approach, that supports our youth. In a perfect world the answer would be that all unintended pregnancies were eliminated and that there would be no need for an abortion. But it's not perfect, we're fallible, and abortion's a question that we have to grapple with in this chamber. Each of us have come to our own position on the issue after much time and thought, and this body clearly represents a diversity of beliefs. I would hope that those differences in beliefs do not interfere with our willingness to consider voting for support of counseling teens in crisis. We owe them our support. This isn't a middle ground for me, this isn't a compromise bill. I believe that we're moving towards better ground, and I ask you for the support of 527 ought to pass as amended. Thank you, Madam President.

(The Chair recognized Sen. Clegg to speak.)

SENATOR CLEGG: Thank you, Madam President. Unlike my colleague, if I'm thirsty enough and there's no Budweiser at the bar, I'd actually drink a Schlitz rather than die from dehydration. I look at this bill and

it's not what I wanted. I wanted the amendment that we just heard, because I think it's most important that the family be involved as much as possible. Regardless of what some of us think, it's always easier not to tell your parents; as someone said, we don't want to disappoint 'em. But I don't have that option any more. So I look at this bill, as a minimum, provides a gate that may reveal child abuse, it may help stop a child predator from doing again what he's done to that woman who shows up at that clinic. It may well work to help a young lady understand her fears of her parents are unfounded, or maybe it will allow the inclusion of one of the parents, the most understanding one, but at least then there would be one person in the family, one person at home that was involved. Since my concern is for the family, and since my concern is for the young pregnant girl that could be 13 or 14 years old, I'm going to vote for this. Because to do otherwise would be to support the current situation which leaves, in my opinion, the youngest, most vulnerable among us with no safety net, no place to learn the alternatives. It leaves the predator as the only source of information and probably the one that makes the actual decision instead of someone who's a professional counselor. The bill, in my opinion, doesn't go enough, but it's certainly better than doing nothing, and I think nothing is the wrong way to go. We need something to be sure that those among us have someplace to turn to in a time of crisis. I ask my colleagues to join me and vote to do something. Thank you.

(The Chair recognized Sen. Kenney for a question of Sen. Sgambati.)

SENATOR KENNEY: Sen. Sgambati, Sen. Clegg's testimony brought up a question that I hadn't really thought about, or that wasn't really answered in the hearings in the Health and Human Services Committee. But we have a lot of teenagers, young gals that are coming over from other states into New Hampshire and coming to our, you know, clinics, and whatever, you know, whatever they might be doing, terminating their pregnancy or if they're going to have the child. But I'm wondering, under your counseling bill, how would that treat a young girl from out of State of New Hampshire; would this just address New Hampshire residents, or would it address also out-of-state young residents as well, or out-of-state residents?

SENATOR SGAMBATI: I don't have a specific answer to that. I think what's important is that it's clearly been told by the people who work in the clinics, the people who run the clinics, that these are protocols that they use in place. This just ensures that those stay in place, and that they're applied in all situations, in clinics as well as doctors' offices. So I can't imagine that any clinic would change their way of operating for somebody out of state or out of country; it's a teenage girl in a counseling relationship, they're going to go forward as is.

SENATOR KENNEY: Thank you.

(The Chair recognized Sen. Hassan to speak.)

SENATOR HASSAN: Thank you, Madam President. I rise in support of 527 with the committee amendment. This bill honors two core principles of mine, the first that abortions should be safe, rare and legal; the second that we have a heightened duty to minors. This bill honors my first core principle that abortions be safe, rare and legal, because it underscores that all women seeking abortions, regardless of age, will have timely access to needed reproductive healthcare from a qualified provider, with qualified counseling, in an environment where she can

determine how to deal with an unintended pregnancy in her own time, privately, and with objective adult support. We've talked already about the problems with parental notification laws, that they present a barrier to access that can negatively impact the health and safety of our teens. This bill does not do that. But our obligation to protect the health and safety of our teenagers doesn't stop when we make sure that we don't have barriers to access to critical healthcare for them.

A constituent who called me last spring about my support for the repeal for the unconstitutional parental notification bill talked with me at great length and gradually began to concede in our conversation that all parents can't be involved in these decisions with their parents, depending on the family circumstance, depending on the mindset of the teen. But the question he kept coming back to was how do we know that if the parent isn't there, that there is high-quality care and counseling being delivered to our young people. Now, that is a very reasonable question for any parent to ask. We do it instinctively every time we accompany a child or a teenager to a medical appointment or to a hospital stay. We are another pair of eyes, we are another pair of ears; we have experience as healthcare consumers; we are used to, we hope, asking doctors difficult questions, and we do that with our children. And in this situation, where we can't be involved all the time because with that great conundrum of adolescence sometimes we just can't be, it won't work and it will, in fact, negatively impact the health and safety of our young people, for us to be – it's legitimate to wonder who's going to look out for quality care for the young person who may be for the first time having an interaction with a provider on her own. Many of our providers in this state can already answer the question: they have excellent protocols in place, they provide excellent care and counseling. And nothing in this bill undermines that.

These centers have worked very hard to do what they do well, and I have great respect for what they do. But there are two reasons not to rest with our current situation. One is illustrated by testimony we heard in the Committee from a doctor from Dartmouth who is a member – I think it's called The Center for Informed Decision-Making. And he came down to testify on this bill, with the support of his colleagues at The Center, because research shows that medical providers often think they communicate better than they actually do, it's human nature. I'm a lawyer, I think I communicate well to all my clients about what it's like to go through litigation. But the really good ones start asking me questions and I realize I'm assuming a whole lot of information. Now, I think that these centers, many of them already have protocols that guard against that kind of situation happening. But what the doctor from Dartmouth told us was that their research shows that having protocols in place that slows a provider down just a little bit reminds them of what the procedure is, who their patient is, and takes them through a process, results in much better outcomes. It was very interesting and important testimony, and I urge my colleagues, when they have time, to read it. And the other reason that we should not just be relying on the very excellent centers and their wonderful protocols that they already have is that not all of our teenagers will get reproductive health services and decide whether or not to terminate an unintended pregnancy at those centers. There are private providers who will perform abortions, or counsel a young person if she's trying to decide whether or not to terminate a pregnancy. And what Sen. Sgambati's interactions with the three callers she's had tell us is that some of those private providers do not have

protocols in place, or if they do, they are not following them. And those teenagers did not get the kind of communication and objective counseling and care and support that they needed at those moments. And this bill will increase the likelihood that young people in that situation will. A number of people who have raised concerns about this bill have raised concerns about what they see as possible unintended consequences, and I think we have dealt with those in the amendment. Others have raised concerns about this bill because they have pointed out that there are other areas in which we might want to require counseling; for instance, if a young woman decides to continue a pregnancy. And I'm not opposed to talking about that if that's something people want to bring up in another legislative session. It is very true that carrying a pregnancy to term can really put, especially a young girl's, a young woman's health at risk. But we do things a step at a time in this Legislature, and the fact that there are other areas of concern that we might address at another time doesn't negate the strength of this bill.

Finally, a number of us in this room have been working to protect the health and safety of women faced with an unintended pregnancy; we've been working at this for decades. We all care enormously about the task. And we've all recognized the unique position of minors who are facing an unintended pregnancy. This bill continues our work to ensure that we are doing everything we can to protect the health and safety of these young women while allowing them with appropriate supports to make private, very important, very difficult and truly medical decisions in an environment that will allow them support and self-determination. Madam President, I thank you for your time.

Recess/Out of Recess.

Sen. Gottesman moved the question.

Without objection, the Chair moved to close debate with one remaining speaker.

(The Chair recognized Sen. Fuller Clark to speak.)

SENATOR FULLER CLARK: Thank you very much, Madam President. I rise to speak to Senate Bill 527. I just wanted to say that my colleagues who support Senate Bill 527 today are passionately committed to protecting our pregnant teens. And many of us who cannot support Senate Bill 527 are also passionately committed to protecting our pregnant teens. We just disagree on what is the best way to ensure and provide that protection. Thank you.

The question is on the adoption of Ought to Pass as Amended on SB 527.

A roll call was requested by Sen. Barnes, seconded by Sen. Gottesman.

The following Senators voted Yes: Reynolds, Sgambati, Cilley, Odell, Bragdon, Gottesman, Foster, Clegg, DeVries, Hassan.

The following Senators voted No: Gallus, Kenney, Burling, Janeway, Roberge, Kelly, Larsen, Gatsas, Barnes, Letourneau, D'Allesandro, Estabrook, Downing, Fuller Clark.

Yeas: 10 - Nays: 14

Motion of Ought to Pass as Amended failed.

Sen. Burling moved Referred to Interim Study.

The question is on the motion of Referred to Interim Study on SB 527.

Motion of Referred to Interim Study adopted.

PARLIAMENTARY QUESTION

SENATOR GATSAS: Parliamentary question. Was the bill voted down, Madam President?

PRESIDENT LARSEN: The Ought to Pass as Amended bill failed.

SENATOR GATSAS: When an ought-to-pass motion fails, does that allow it to interim study?

PRESIDENT LARSEN: You need a new motion. That is the correct procedure.

SENATOR GATSAS: That's higher than an ITL? 'Cause the ITL would be the next motion.

PRESIDENT LARSEN: The Interim Study motion succeeded on a voice vote, the vote was taken.

SENATOR GATSAS: What was the vote?

PRESIDENT LARSEN: It was a voice vote.

MOTION OF RECONSIDERATION

Sen. Gatsas, having voted with the prevailing side, moved reconsideration of the previous motion for Referred to Interim Study.

The question is on the motion of Reconsideration on the motion by which SB 527 was Referred to Interim Study.

A roll call was requested.

Recess/Out of Recess.

Sen. Gatsas withdrew his motion for reconsideration.

SB 527 Referred to Interim Study.

SB 541, relative to an expedited process for certificate of need review. Health and Human Services Committee. Ought to Pass with Amendment, Vote 4-0. Senator Sgambati for the committee.

Sen. Estabrook, Dist. 21

March 13, 2008

2008-1027s

01/09

Amendment to SB 541

Amend the title of the bill by replacing it with the following:

AN ACT relative to an expedited process for certificate of need review and membership of the health services planning and review board.

Amend the bill by replacing all after section 1 with the following:

2 New Paragraph; Certificate of Need; Expedited Process. Amend RSA 151-C:11 by inserting after paragraph II the following new paragraph:

III. Notwithstanding the provisions of RSA 151-C:8, on or before January 1, 2009 the board shall initiate rulemaking, pursuant to RSA 541-A, delineating projects that are eligible for expedited review, and establishing an expedited review process for such projects. At a minimum, such rules shall include the process and timeline for submitting expedited applications, the review schedule, and the content of an expedited application.

3 Health Services Planning and Review Board; Membership. Amend RSA 151-C:3, I(a)(2)(D) to read as follows:

(D) A ~~county official~~ ***representative of county government nominated by the New Hampshire Association of Counties.***

4 Effective Date. This act shall take effect upon its passage.

2008-1027s

AMENDED ANALYSIS

This bill requires the health services planning and review board to initiate rulemaking relative to an expedited review process for certain projects.

This bill also changes criteria for the member representing county government on the health services planning and review board.

SENATOR SGAMBATI: Thank you, Madam President. Let's try this one. It is a controversial area, but it is a very simple bill and one that I think makes a great deal of sense. Senate Bill 541 requires that the Health Services Planning and Review Board adopt rules relative to developing an expedited process for processing Certificate of Need for certain health facilities. The Certificate of Need process, as many of you know, is typically complicated, lengthy and very costly to both the applicant and the State. When a healthcare facility only requires routine repairs, maintenance or renovations, there's no need for them to do a full Certificate of Need application. It adds to the healthcare cost, it adds no benefit. While the Committee heard testimony that many believe that the Board already has the authority to develop an expedited process without this legislation, we believed it was important to assure that an expedited process would be developed and the rules filed by a date certain. I believe this bill improves the process, reduces bureaucracy, for the applicant and for the State alike. Please join the Health and Human Services Committee and vote Senate Bill 541 ought to pass with amendment. Thank you, Madam President.

The question is on the adoption of Committee Amendment 1027s.

Committee Amendment 1027s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 541.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SCR 11, supporting the application of Taiwan for observer status at the World Health Organization. Health and Human Services Committee. Ought to Pass, Vote 5-0. Senator Janeway for the committee.

SENATOR JANEWAY: Thank you, Madam President. I can't believe our timing, since we just ordered Chinese. (Laughter) I move that Senate Concurrent Resolution 11 ought to pass. This Senate Concurrent Resolution supports the application of Taiwan for observer status at the World Health Organization. And I might add since we don't have a Senate Foreign Relations Committee, this resolution came to the Health and Human Services. Due to the objections from the Peoples Republic of China, Taiwan has been denied normal access to global disease prevention and control networks, specifically the World Health Organization. That leaves a hole in safeguards both for Taiwan and puts the rest of the world at unnecessary risk in this age of worldwide epidemics and pandemics; think of SARS and Avian Flu. Taiwan does not seek formal recognition at the World Health Organization. Even the PLO has ob-

server status at the World Health Organization. Taiwan has one of the most successful healthcare systems in the world with an over 99 percent participation rate, and the country should not be at a disadvantage. The Committee agreed wholeheartedly with the Senate Concurrent Resolution and its prime sponsor, Sen. Foster. We ask your support of ought to pass on SCR 11. Thank you, Madam President.

(The Chair recognized Sen. Barnes for a question of Sen. Janeway.)

SENATOR BARNES: Sen. Janeway, does this SCR contain a stipulation that if Mainland China doesn't do this, we're going to hold our Olympic Team back, we're going to have a little teeth in it, too?

SENATOR JANEWAY: It does not, Senator. But you can refuse to eat your Chinese dinner in protest. (Laughter)

SENATOR BARNES: That's what we're – you know the menu and I don't, huh, okay.

SENATOR JANEWAY: It pays to be in the majority. (Laughter)

SENATOR BARNES: I will second that, you're absolutely right.

(The Chair recognized Sen. Letourneau for a question of Sen. Janeway.)

SENATOR LETOURNEAU: I just wanted to ask if – many, many New Hampshire businesses do business in Mainland China and a lot of – I have a friend that has five factories over there – and there's a real sore spot between China and Taiwan, we all know that. Did that come up during any of the discussions of this? You know, if the State of New Hampshire starts putting out a resolution that will offend China, how does that affect our business relationships, did that come up?

SENATOR JANEWAY: That's a good question, and I would pass that question to Sen. Foster, if I may. He's the expert on this.

SENATOR LETOURNEAU: Okay, thank you.

(The Chair recognized Sen. Foster to speak.)

SENATOR FOSTER: I've love to speak. (Laughter) After I have a Schlitz. Which means I won't be speaking for a while. You know, to answer your question, the fact is that New Hampshire businesses do a lot of business with both Taiwan and China. Does Mainland China love this resolution? Likely not, but I think it's important for, for health. This is really a health issue. This doesn't recognize them, it doesn't recognize Taiwan as an independent nation. It asks them to have observer status at the United Nations, much, as Sen. Janeway said, like the Palestinian Authority which isn't recognized either as a separate nation. This is about health endangerment.

SENATOR LETOURNEAU: Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on SCR 11.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 302-FN, relative to parental notification. Judiciary Committee. Inexpedient to Legislate, Vote 3-2. Senator Foster for the committee.

MOTION TO TABLE

Sen. Foster moved to have SB 302-FN laid on the table.

Motion adopted.

LAID ON THE TABLE

SB 302-FN, relative to parental notification.

Sen. Barnes is in opposition to the motion to table SB 302-FN.

SB 379, relative to boating while intoxicated and transporting alcoholic beverages by a minor. Judiciary Committee. Ought to Pass with Amendment, Vote 5-0. Senator Letourneau for the committee.

Senate Judiciary

March 11, 2008

2008-0963s

03/04

Amendment to SB 379

Amend RSA 265-A:45, II as inserted by section 4 of the bill by replacing it with the following:

II. No person operating a boat while under the age of 21 shall, except when accompanied by a parent, legal guardian, or legal age spouse, transport any liquor or beverage in any part of a boat with an intent to consume such liquor or beverage. Anyone violating this paragraph may, following a hearing, have his or her privilege to operate a boat on the waters of the state suspended for 60 days and may additionally have his or her license or privilege to drive suspended for 60 days.

Amend the bill by replacing section 6 with the following:

6 Effective Date. This act shall take effect upon its passage.

SENATOR LETOURNEAU: Thank you, Madam President. I move Senate Bill 379 ought to pass with amendment. This legislation clarifies certain laws relating to boating while intoxicated, and makes the statute parallel to driving automobiles and OHRV's while intoxicated, the statutes for underage operators. The legislation was requested by the Department of Safety. In recent years New Hampshire has worked to improve our statutes to prohibit underage consumption of alcoholic beverages. This bill is another step and is aimed at providing law enforcement with the needed tools to deal with underage consumption of alcoholic beverages on boats. The Judiciary Committee recommends Senate Bill 379 be adopted as amended, and asks for your support. Thank you.

The question is on the adoption of Committee Amendment 0963s.

Committee Amendment 0963s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 379.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 378, establishing a committee to study the creation of a business court at the superior court level. Judiciary Committee. Ought to Pass with Amendment, Vote 4-0. Senator Letourneau for the committee.

Senate Judiciary

March 18, 2008

2008-1064s

03/01

Amendment to SB 378

Amend the title of the bill by replacing it with the following:

AN ACT authorizing the supreme court to establish a business and commercial dispute docket in the superior court.

Amend the bill by replacing all after the enacting clause with the following:

1 New Section; Business and Commercial Dispute Docket. Amend RSA 491 by inserting after section 7 the following new section:

491:7-a Business and Commercial Dispute Docket.

I. Without limiting the jurisdiction vested in any court in the state, and subject to the appointment of a presiding justice by the governor with the consent of the executive council as provided in this section, the supreme court may establish by court order not inconsistent with this section, a business and commercial dispute docket in the superior court which shall have jurisdiction to hear and determine business and commercial disputes, as described in this section, when:

(a) The parties have consented to the jurisdiction of the business and commercial dispute docket by agreement or stipulation;

(b) At least one party is a "business entity" as defined in paragraph II;

(c) No party is a consumer as that term is defined in paragraph II; and

(d) If money damages are sought, the amount in controversy exceeds \$50,000 or such other greater amount as the supreme court determines by rule.

II. In this section:

(a) A "business entity" means a corporation, a statutory trust, a business trust or association, a real estate investment trust, a common law trust, any other unincorporated business, including a partnership, whether a general or a limited liability partnership, or limited partnership, including a limited liability limited partnership, a limited liability company, a professional association, or a joint venture.

(b) A "consumer" means an individual who purchases or leases merchandise primarily for personal, family, or household purposes.

III. The governor with the consent of the executive council may appoint the first presiding justice of the business and commercial dispute docket, who shall be qualified by reason of such person's knowledge and experience in business and commercial law matters. The chief justice of the superior court, following the appointment or designation of the initial presiding justice, may designate such additional justices to preside over business and commercial docket cases, as necessary, based upon caseload, disqualification of the presiding justice, or efficient allocation of judicial resources.

IV. The presiding justice of the business and commercial dispute docket shall be an associate justice of the superior court and shall be entitled to the compensation and benefits provided to all such justices under applicable law, including, but not limited to, RSA 491-A:1 and RSA 100-C.

V. The workload of the presiding justice of the business and commercial dispute docket shall be the matters before that docket. The presiding justice may be assigned to any other matter within the jurisdiction of the superior court or sit by designation on any other court in the same manner as any other associate justice of the superior court, as determined to be necessary by the chief justices of the superior and supreme courts.

VI. Subject to the provisions of this section, all civil actions in which the principal claim or claims arise from or involve the following shall be assigned to the business and commercial dispute docket for all purposes, including motion practice, discovery, injunctive relief, alternative dispute resolution, and hearing on the merits with or without a jury:

(a) Claims arising from breach of contract or fiduciary duties, fraud, misrepresentation, business tort, or statutory violations arising out of business dealings or transactions.

(b) Claims arising from transactions under the Uniform Commercial Code.

(c) Claims arising from the purchase, sale, and lease of commercial real or personal property or security interests therein.

(d) Claims related to surety bonds.

(e) Franchisee/franchisor relationships and liabilities.

(f) Malpractice claims of non-medical professionals in connection with rendering services to a business enterprise.

(g) Real estate title petitions.

(h) Shareholder derivative actions.

(i) Commercial class actions.

(j) Commercial bank transactions.

(k) Actions relating to the internal affairs or governance; dissolution or liquidation rights obligations between and among owners, including shareholders, partners, or members; or liability or indemnity of managers, including officers, directors, managers, trustees, or members or partners functioning as managers, of corporations, partnerships, limited partnerships, limited liability companies or partnerships, professional associations, business trusts, joint ventures, or other business enterprises.

(l) Business insolvencies and receiverships.

(m) Other complex disputes of a business or commercial nature.

2 Effective Date. This act shall take effect upon its passage.

2008-1064s

AMENDED ANALYSIS

This bill authorizes the supreme court to establish a business and commercial dispute docket in the superior court.

SENATOR LETOURNEAU: Thank you, Madam President. I move Senate Bill 378 ought to pass with amendment. Senate Bill 378 was introduced to enact a study committee to investigate the establishment of a business court in the Superior Courts. Testimony received at the public hearing indicated that we really do not need to have another study committee and that these business court dockets in other states are working very well in serving the business community. The committee amendment is modeled loosely on what the State of Delaware's been doing successfully for a number of years. The amendment creates a voluntary business docket whereby business interest, both business interests would have to consent to the monetary cases would involve – would be in amounts in excess of \$50,000 or would seek injunction relief in equity cases. The amendment allows that the Governor may appoint someone specifically to serve in that capacity who would receive the same pay and benefits as other Superior Court judges. Because we do not know at this time the number of cases that may elect to be placed on the docket, the amendment further clarifies that this judge would also be assigned to hear other Superior Court cases in order for him or her to have full caseload. The Judiciary Committee recommends that Senate Bill 378 be adopted and amended, and asks for your support. Thank you.

The question is on the adoption of Committee Amendment 1064s.

Committee Amendment 1064s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 378.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 389, relative to the protection of children's medical records in abuse and neglect and child custody cases. Judiciary Committee. Ought to Pass with Amendment, Vote 4-0. Senator Gottesman for the committee.

Sen. Sgambati, Dist. 4

March 10, 2008

2008-0945s

05/04

Amendment to SB 389

Amend the title of the bill by replacing it with the following:

AN ACT authorizing the supreme court to establish a business and commercial dispute docket in the superior court. [sic]

Amend the bill by replacing all after the enacting clause with the following:

1 Physicians and Surgeons; Confidential Communications. Amend RSA 329:26 to read as follows:

329:26 Confidential Communications. The confidential relations and communications between a physician or surgeon licensed under provisions of this chapter and the patient of such physician or surgeon are placed on the same basis as those provided by law between attorney and client, and, except as otherwise provided by law, no such physician or surgeon shall be required to disclose such privileged communications. Confidential relations and communications between a patient and any person working under the supervision of a physician or surgeon that are customary and necessary for diagnosis and treatment are privileged to the same extent as though those relations or communications were with such supervising physician or surgeon. ***The confidential relations and communications under this section apply to minor children who are patients of a physician or surgeon.*** This section shall not apply to investigations and hearings conducted by the board of medicine under RSA 329, any other statutorily created health occupational licensing or certifying board conducting licensing, certifying, or disciplinary proceedings or hearings conducted pursuant to RSA 135-C:27-54 or RSA 464-A. This section shall also not apply to the release of blood samples and the results of laboratory tests for blood alcohol content taken from a person who is under investigation for driving a motor vehicle while such person was under the influence of intoxicating liquors or controlled drugs. The use and disclosure of such information shall be limited to the official criminal proceedings.

2 Mental Health Practitioners; Privileged Communications. Amend RSA 326-B:35, I to read as follows:

I. Confidential communications between licensees and their clients are privileged in the same manner as those provided by law between physician and patient, and, except as otherwise provided by law, no licensee shall be required to disclose such privileged communications. Confidential communications between a client of a licensee and any person working under the supervision of such licensee to provide services that are customary and necessary for diagnosis and treatment are privileged to the same extent as would be the same communications between the

supervising licensee and the client. ***The confidential relations and communications under this section apply to minor children who are patients of a licensee.***

3 Nurses; Privileged Communications. Amend RSA 330-A:32 to read as follows:

330-A:32 Privileged Communications. The confidential relations and communications between any person licensed under provisions of this chapter and such licensee's client are placed on the same basis as those provided by law between attorney and client, and nothing in this chapter shall be construed to require any such privileged communications to be disclosed, unless such disclosure is required by a court order. Confidential relations and communications between a client and any person working under the supervision of a person licensed under this chapter which are necessary and customary for diagnosis and treatment are privileged to the same extent as though those relations or communications were with the supervising person licensed under this chapter, unless such disclosure is required by a court order. ***The confidential relations and communications under this section apply to minor children who are clients of a licensee.*** This section shall not apply to hearings conducted pursuant to RSA 135-C:27-54 or RSA 464-A.

4 Effective Date. This act shall take effect 60 days after its passage.

2008-0945s

AMENDED ANALYSIS

This bill provides that confidential communications between a physician, nurse, or mental health practitioner and a minor child are privileged.

SENATOR GOTTESMAN: Thank you, Madam President. I move Senate Bill 389 ought to pass with amendment. Senate Bill 389 deals with the protection of children's medical records in abuse and neglect and child custody cases. The bill establishes a legal privilege to protect the child's medical record. The amendment codifies the *Berg* decision and places it into statutes where it will be clearly available to all parties in these cases. The law protecting communications between a physician and patient already exists, and children have been considered to be covered by it. Senate Bill 389 makes this clear. The legislation says that the court, on a case-by-case basis, looks to the facts and makes a determination as to whether information can be released. The Judiciary Committee also heard parallel legislation, Senate Bill 411, which we will present and then table as there is no need for both bills to go forward on the same subject. The Judiciary Committee recommends that Senate Bill 389 be adopted and amended, and asks for your support.

The question is on the adoption of Committee Amendment 0945s.

Committee Amendment 0945s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 389.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 411, relative to the confidentiality of health care records during the investigation of child abuse and neglect cases. Judiciary Committee. Ought to Pass, Vote 4-0. Senator Gottesman for the committee.

MOTION TO TABLE

Sen. Gottesman moved to have SB 411 laid on the table.

Motion adopted.

LAI D ON THE TABLE

SB 411, relative to the confidentiality of health care records during the investigation of child abuse and neglect cases.

SB 433, relative to confidential communications between a physician and a patient. Judiciary Committee. Ought to Pass with Amendment, Vote 4-0. Senator Clegg for the committee.

Senate Judiciary
March 18, 2008
2008-1065s
08/10

Amendment to SB 433

Amend RSA 329:26 as inserted by section 1 of the bill by replacing it with the following:

329:26 Confidential Communications. The confidential relations and communications between a physician or surgeon licensed under provisions of this chapter and the patient of such physician or surgeon are placed on the same basis as those provided by law between attorney and client, and, except as otherwise provided by law, no such physician or surgeon shall be required to disclose such privileged communications. Confidential relations and communications between a patient and any person working under the supervision of a physician or surgeon that are customary and necessary for diagnosis and treatment are privileged to the same extent as though those relations or communications were with such supervising physician or surgeon. This section shall not apply to investigations and hearings conducted by the board of medicine under RSA 329, any other statutorily created health occupational licensing or certifying board conducting licensing, certifying, or disciplinary proceedings or hearings conducted pursuant to RSA 135-C:27-54 or RSA 464-A. This section shall also not apply to the release of blood *or urine* samples and the results of laboratory tests for *drugs or* blood alcohol content taken from a person ~~[who]~~ *in connection with the offense for which the person* is under investigation for driving a motor vehicle while such person was under the influence of intoxicating liquors or controlled drugs. The use and disclosure of such information shall be limited to the official criminal proceedings.

SENATOR CLEGG: Thank you, Madam President. I move Senate Bill 433 ought to pass with amendment. Senate Bill 433 deals with confidential communications between a physician and a patient. In this bill we are dealing with laboratory tests and specifically with tests that are performed as a result of an incident for which someone is under investigation, such as a motor vehicle accident. Right now the current interpretation is that only blood tests are included. This bill clarifies that both blood and urine tests may be obtained. The committee amendment makes it completely clear that the results of the blood or urine test can only be obtained in relationship to the offense which gave rise to the investigation at hand. This protects individuals from having to release routine blood tests that they may have done last week at their doctor's office. The Judiciary Committee recommends Senate Bill 433 be adopted as amended, and asks for your support. Thank you.

The question is on the adoption of Committee Amendment 1065s.
Committee Amendment 1065s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 433.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 495-FN, prohibiting Internet solicitation and exploitation of children. Judiciary Committee. Ought to Pass with Amendment, Vote 4-0. Senator Foster for the committee.

Senate Judiciary

March 18, 2008

2008-1066s

04/10

Amendment to SB 495-FN

Amend the bill by replacing all after the enacting clause with the following:

1 Child Pornography; Definitions. RSA 649-A:2 and RSA 649-A:3 are repealed and reenacted to read as follows:

649-A:2 Definitions. In this chapter:

I. "Child" means any person under the age of 16 years.

II. "Disseminate" means to import, publish, produce, print, manufacture, distribute, sell, lease, exhibit, or display.

III. "Sexually explicit conduct" means human masturbation, the touching of the actor's or other person's sexual organs in the context of a sexual relationship, sexual intercourse actual or simulated, normal or perverted, whether alone or between members of the same or opposite sex or between humans and animals, or any lewd exhibitions of the buttocks, genitals, flagellation, bondage, or torture. Sexual intercourse is simulated when it depicts explicit sexual intercourse that gives the appearance of the consummation of sexual intercourse, normal or perverted.

IV. "Visual representation" means any visual depiction, including any photograph, film, video, digital image, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where:

(a) The production of such visual depiction involves the use of a child engaging in or being engaged in sexually explicit conduct; or

(b) Such visual depiction is a digital image, computer image, or computer-generated image of a child engaging in or being engaged in sexually explicit conduct; or

(c) Such visual depiction has been created, adapted, or modified to appear that an identifiable child is engaging in or being engaged in sexually explicit conduct.

V.(a) "Identifiable child" means a person:

(1) Who was a child at the time the visual depiction was created, adapted, or modified; or

(2) Whose image as a child was used in creating, adapting, or modifying the visual depiction; and

(3) Who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature.

(b) The term "identifiable child" shall not be construed to require proof of the actual identity of the identifiable child.

VI. "Previous conviction" or "previously convicted" means having been convicted by a jury or a judge, or having plead guilty prior to the commission of the current offense. For purposes of this paragraph, a previous conviction need not have been affirmed on appeal.

VII. The term "computer" means an electronic, magnetic, optical, electrochemical, or other high speed data processing device performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device, but such term does not include an automated typewriter or typesetter, a portable hand held calculator, or other similar device.

649-A:3 Possession of Child Sexual Abuse Images.

I. No person shall knowingly:

(a) Buy, procure, possess, or control any visual representation of a child engaging in sexually explicit conduct; or

(b) Bring or cause to be brought into this state any visual representation of a child engaging in sexually explicit conduct.

II. An offense under this section shall be a class A felony if such person has had no previous convictions in this state or another jurisdiction for the conduct prohibited by paragraph I. Upon conviction of an offense under this section based on an indictment alleging that the person has been previously convicted of an offense under this section or a reasonably equivalent offense in another jurisdiction, the defendant may be sentenced to a maximum sentence not to exceed 20 years and a minimum sentence not to exceed 1/2 of the maximum sentence.

III. It shall be an affirmative defense to a charge of violating paragraph I of this section that the defendant:

(a) Possessed less than 3 images of any visual depiction proscribed by that paragraph; and

(b) Promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any visual depiction or copy thereof –

(1) Took reasonable steps to destroy each such visual depiction; or

(2) Reported the matter to a law enforcement agency and afforded that agency access to each such visual depiction.

2 New Sections; Child Pornography; Distribution and Manufacture of Child Sexual Abuse Images. Amend RSA 649-A by inserting after section 3 the following new sections:

649-A:3-a Distribution of Child Sexual Abuse Images.

I. No person shall:

(a) Knowingly sell, exchange, or otherwise transfer, or possess with intent to sell, exchange, or otherwise transfer any visual representation of a child engaging in or being engaged in sexually explicit conduct;

(b) Knowingly publish, exhibit, or otherwise make available any visual representation of a child engaging in or being engaged in sexually explicit conduct.

II.(a) If such person has had no previous convictions in this state or another state for the conduct prohibited by paragraph I, the defendant may be sentenced to a maximum sentence not to exceed 20 years and a minimum sentence not to exceed 1/2 of the maximum. Upon conviction of an offense under this section based on an indictment alleging that the person has been previously convicted of an offense under this section or a reasonably equivalent offense in an out-of-state jurisdiction, the defendant may be sentenced to a maximum sentence not to exceed 30 years and a minimum sentence not to exceed 1/2 of the minimum.

(b) If such person has no previous convictions in this state or another state for the conduct prohibited in paragraph I, and is convicted under section I(b) with having less than three images or visual representations, the defendant will be guilty of a class B felony.

III. Nothing in this chapter shall be construed to limit any law enforcement agency from possessing or displaying or otherwise make available any images as may be necessary to the performance of a valid law enforcement function.

649-A:3-b Manufacture Of Child Sexual Abuse Images.

I. No person shall knowingly create, produce, manufacture, or direct a visual representation of a child engaging in or being engaged in sexually explicit conduct, or participate in that portion of such visual representation that consists of a child engaging in or being engaged in sexually explicit conduct.

II. If such person has had no previous convictions in this state or another state for the conduct prohibited in this section, the defendant may be sentenced to a maximum sentence not to exceed 30 years and a minimum sentence not to exceed 1/2 of the maximum. Upon conviction of an offense under this section based on an indictment alleging that the person has been previously convicted of an offense under this section or a reasonably equivalent offense in an out-of-state jurisdiction, a person may be sentenced to life imprisonment or for such term as the court may order.

3 New Sections; Child Pornography; Proving Age of Child; Discovery. Amend RSA 649-A by inserting after section 5 the following new sections:

649-A:6 Proving Age of Child. Whether a child depicted in a visual representation is a minor for the purposes of this section is a question of fact for the jury and may be found by expert or lay testimony, or by viewing the images.

649-A:7 Discovery.

I. In any criminal proceeding, any material that constitutes a visual representation of a child engaging in or being engaged in sexually explicit conduct shall remain in the care, custody, and control of the state or the court.

II. The state shall provide ample opportunity for the defendant, his or her attorney, or any individual the defendant may seek to qualify to furnish expert testimony at trial to inspect, view, and examine the property or material at a state facility.

III. Upon a defense motion establishing that it is necessary to copy, photograph, duplicate, or otherwise reproduce such material or property in order to prepare a defense, the court may authorize such action, provided that the court's order include a protective order prohibiting disclosure of the material or property to any one other than the defendant, his or her attorney, or any individual the defendant may seek to qualify to furnish expert testimony at trial, and requiring that all such materials and property provided to the defense be returned to the state at the end of the case.

3 Computer Pornography and Child Exploitation Prevention; Certain Uses of Computer Services Prohibited. RSA 649-B:4 is repealed and reenacted to read as follows:

649-B:4 Certain Uses of Computer Services Prohibited.

I. No person shall knowingly utilize a computer on-line service, internet service, or local bulletin board service to seduce, solicit, lure, or entice a child or another person believed by the person to be a child, to commit any of the following:

(a) Any offense under RSA 632-A, relative to sexual assault and related offenses.

(b) Indecent exposure and lewdness under RSA 645:1.

(c) Endangering a child as defined in RSA 639:3, III.

II.(a) A person who violates the provisions of paragraph I shall be guilty of a class A felony if such person believed the child was under the age of 13, otherwise such person shall be guilty of a class B felony.

(b) A person convicted under paragraph I based on an indictment alleging that the person has been previously convicted of an offense under this section or a reasonably equivalent offense in an out-of-state jurisdiction shall be charged as a class A felony. If the indictment also alleges that the person believed that the child was under the age of 13, the person may be sentenced to a maximum sentence not to exceed 20 years and a minimum sentence not to exceed 10 years.

(c) If the person has been previously convicted 2 or more times for an offense under this section or a reasonably equivalent statute in another state, the person may be sentenced to a maximum term not to exceed 30 years.

III. It shall not be a defense to a prosecution under this section that the victim was not actually a child so long as the person reasonably believed that the victim was a child.

4 Indecent Exposure and Lewdness. RSA 645:1 is repealed and reenacted to read as follows:

645:1 Indecent Exposure and Lewdness.

I. A person is guilty of a misdemeanor if such person fornicates, exposes his or her genitals, or performs any other act of gross lewdness under circumstances which he or she should know will likely cause affront or alarm.

II. A person is guilty of a class B felony if:

(a) Such person purposely performs any act of sexual penetration or sexual contact on himself or herself or another in the presence of a child who is less than 16 years of age.

(b) Such person purposely transmits to a child who is less than 16 years of age, or an individual whom the actor reasonably believes is a child who is less than 16 years of age, an image of himself or herself fornicating, exposing his or her genitals, or performing any other act of gross lewdness.

(c) Having previously been convicted of an offense under paragraph I, or of an offense that includes the same conduct under any other jurisdiction, the person subsequently commits an offense under paragraph I.

III. A person shall be guilty of a class A felony if having previously been convicted of 2 or more offenses under paragraph II, or a reasonably equivalent statute in another state, the person subsequently commits an offense under this section.

5 New Section; Registration of Criminal Offenders; Online Identifiers Amend RSA 651-B by inserting after section 4 the following new section:

651-B:4-a Registration of Online Identifiers. In addition to any other information a person who is required to register is required to provide pursuant to RSA 651-B:4, such person shall report any online identifier such person uses or intends to use. For purposes of this section, "online identifier" includes all of the following: electronic mail address, instant message screen name, user identification, user profile information, and chat or other Internet communication name or identity information. Such person shall report any changes to an existing online identifier, or the creation of any new online identifier to law enforcement before using the online identifier.

6 New Subparagraph; Registration of Criminal Offenders; Availability of Information to the Public. Amend RSA 651-B:7, II by inserting after subparagraph (b)(1)(E) the following new subparagraph:

(F) Any online identifiers, as defined in RSA 651-B:4-a, used by the individual.

7 School Employee and Volunteer Background Investigations. Amend RSA 189:13-a, V to read as follows:

V. Any person who has been convicted of any violation or attempted violation of RSA 630:1; 630:1-a; 630:1-b; 630:2; 632-A:2; 632-A:3; 632-A:4; 633:1; 639:2; 639:3; 645:1, [I(b),] II[,] or III; 645:2; 649-A:3; **649-A:3-a; 649-A:3-b**; 649-B:3; or 649-B:4; or any violation or any attempted violation of RSA 650:2 where the act involves a child in material deemed obscene; in this state, or under any statute prohibiting the same conduct in another state, territory, or possession of the United States, shall not be hired by a school administrative unit, school district, or charter school. By decision of the appropriate governing body, a school administrative unit, school district, or charter school may deny a selected applicant a final offer of employment if such person has been convicted of any felony in addition to those listed above. The governing body may adopt a policy stating that any person who has been convicted of any felony, or any of a list of felonies, shall not be hired.

8 Registration of Criminal Offenders; Definitions. Amend RSA 651-B:1, V(b) to read as follows:

(b) RSA 169-B:41, II, 639:3, III, 649-A:3, **649-A:3-a, 649-A:3-b**, 649-B:3, 649-B:4, or 650:2, II; or

9 Registration of Criminal Offenders; Duration of Registration. Amend RSA 651-B:6, I to read as follows:

I. Any sexual offender required to register as a result of a violation or attempted violation of RSA 632-A:2, 632-A:3, or 645:1, III, and any offender against children required to register as a result of a violation or attempted violation of RSA 169-B:41, II, 632-A:2, 633:1, 633:2, 639:2, 639:3, III, 645:2, II, 649-A:3, I, **649-A:3-a, 649-A:3-b**, 649-B:3, 649-B:4, or 650:2, II, or of an equivalent offense in an out-of-state jurisdiction, shall be registered for life.

10 New Paragraph; Registration of Criminal Offenders; Release of Certain Sexual Offenders Into the Community. Amend RSA 651-B:3 by inserting after paragraph III the following new paragraph:

IV. In the discretion of the local law enforcement agency or the department, such agency or the department may affirmatively verify the address of any offender within that agency's jurisdiction through in-person contact at the home or residence of the offender.

11 Effective Date. This act shall take effect January 1, 2009.

2008-1066s

AMENDED ANALYSIS

This bill:

I. Increases the penalties for possession of images of a child engaging in sexually explicit conduct.

II. Establishes penalties for manufacture and distribution of images of a child engaging in sexually explicit conduct.

III. Redefines "visual representation" of sexually explicit images.

IV. Increases the penalties for use of the Internet or other computer service to seduce, solicit, lure, or entice a child or a person believed to be a child to commit a sexual assault.

V. Requires sexual offenders and offenders against children to report any online identifiers used.

VI. Permits the department of safety or a local law enforcement agency to verify the address of a sex offender through in-person contact at the offender's home or residence.

SENATOR FOSTER: Thank you, Madam President. I move Senate Bill 495 ought to pass with amendment. People who prey on our children are among the most dangerous criminals because they target our most precious and our most vulnerable citizens. In 2006 Governor Lynch, the Attorney General, the law enforcement community here in New Hampshire, and all of us who were here in this body at the time, came together to pass one of the toughest and most comprehensive laws in the nation to protect children from sexual predators. Today we in the Senate have the opportunity to build on that important effort. Again we have come together to develop better protections for our children, this time from predators who use the Internet. As anyone with children can tell you, I've learned a lot about the Internet from my children. Kids today are computer-savvy and using computers at younger ages. Advances in technology make access to the Internet quick, easy and possible from just about anywhere. The Internet holds tremendous opportunity, but it also has the potential to be a dangerous place for our children. According to research conducted by Crimes Against Children Research Center at the University of New Hampshire and the National Center for Missing and Exploited Children, more than one-third of youth Internet users are communicating online with somebody they don't know. Approximately one in seven youth Internet users receive unwanted sexual solicitations over the Internet. In more than half of these solicitations these children were asked for photographs of themselves. Most of these children are also asked by these adults to meet in person. And despite the use of filters, blockers, software monitoring, unwanted exposure to sexual material on the Internet has increased over the last five years. That's why I'm asking you to support the OnLine Child Safety Act. This important act will modernize our on-line enticement laws and toughen criminal penalties for predators who use computer technology to exploit and victimize our kids.

First, this bill strengthens the penalties in existing law for enticing a child over the Internet and provides enhanced penalties for repeat offenders. Second, we are overhauling and expanding child pornography laws to better reflect the victimization that occurs every day when images of sexually abused children are created and distributed. Finally, this legislation closes a loophole so that sex offenders using Webcams can be held accountable. While we are taking action to better protect children, parents should still have the prime responsibility for watching out for their kids. By monitoring their child's online activities, parents can help prevent exposure to sexually explicit materials and unwanted solicitation from adults. But with the ability to access the Internet from just about anywhere without parental supervision, this legislation is needed to help parents. It also gives law enforcement another tool to use against these dangerous criminals. Children should be able to use the Internet as a tool to learn and to grow; they should not be exploited by sexual predators who wish to rob children of their childhood.

A few words about the committee amendment. We heard concerns from the criminal defense bar and motion picture industry and attempted to address those concerns. We came to an arrangement with the Attorney General's Office and modified rules relating to discovery to ensure that the criminal defense bar can properly prepare for the defense of their clients. To address the motion picture industry concerns, we made an amendment to make clear that a child, as opposed to an adult, posing as a child or a body double for a child, must appear in images or a movie for the images to be subject to prosecution under the law as child pornography. Those distributing movies like, for example, "Juno," where an adult of 22, I believe, is playing a young person who may commit acts

in the movie which otherwise would be actionable, if that individual were actually under the age of 16, would not be actionable here, because that person is not a child. There must be a child involved for possession or distribution of the images for it to be a crime under the committee amendment. I ask your support for the committee amendment and to pass the bill. Thank you.

(The Chair recognized Sen. Barnes for a question of Sen. Foster.)

SENATOR BARNES: I got a couple, Sen. Foster. This sounds terrific to me. But my first question is, how is this going to be enforced? Is it being enforced now? What we have on the books. And how is it being done, and how many people have been prosecuted and ... it sure sounds good, but I'm concerned about -

SENATOR FOSTER: Yeah. I don't have all the numbers for you. I do know that there are special groups that do focus on Internet solicitation, and there's a group, if I recall right, in the City of Nashua that focuses on this, and we heard from other folks as well; they just believe they need better tools and more enforcement powers, which is what this gives them.

SENATOR BARNES: My final question to you, Sen. Foster, is, you feel comfortable that throughout this whole State of New Hampshire, if we pass this, and I hope so, that Berlin, Keene, Raymond, all over the state, the law enforcement agencies we have in place are going to be able to go after these bozos that are doing this, and bozoses [sic] that are doing this to the kids?

SENATOR FOSTER: This is going to make it easier for them to do so, and if they catch these individuals, the prison time the individual will receive will be enhanced. It's a good bill.

SENATOR BARNES: Thanks for presenting it.

(The Chair recognized Sen. Clegg to speak.)

SENATOR CLEGG: Thank you, Madam President. As you heard, one in seven kids receives an unwanted sexual solicitation over the Internet. And I can tell you that detectives working on these cases in Hudson tell me if they go online pretending to be a child it's astounding how quickly the adult predator will engage in discussion seeking sex with them, and how many of those predators will actually travel to New Hampshire from other states. They'll also travel within New Hampshire in hopes of meeting a child to have sex. And every time the police get one of these predators, they're actually saving a child. The cases aren't just about undercover work by the police. During our hearing we heard from the principal at Concord High School. There's a case right now with a soccer coach who was posing as a young girl on line and getting the members of his soccer team to talk to him about sex and post sexual pictures of themselves to him. We need to send a message that we're not going to tolerate the Internet predators reaching out to our children in our own homes. Under current law it's the same penalty no matter how many times a criminal preys on kids over the Internet, and to me that's not acceptable. We know from police that many of these predators are "frequent flyers." Just take a look at NBC's *Dateline*, that program they use to catch a predator. They are now actually getting the same people they got before. This bill significantly increases the penalty for repeat offenders and treats predators who reach out to younger children more harshly. The bill also addresses another horrible crime that police are seeing more of with widespread use of Internet, and that's child pornography.

The types of cases the police in New Hampshire are seeing involve the images of infants and toddlers being raped. One of these cases recently prosecuted in New Hampshire involved a sex offender found in possession of hundreds of videos and images of children being abused. These were real children. Extremely disturbing.

Senate Bill 495 makes the distinction between possession, distribution, and manufacture of child pornography. It appropriately treats each crime more harshly. Our current law does not separate out possession, distribution or manufacturing. The bill appropriately increases penalties for child pornography. The bill is constitutional. It's extremely similar to federal law. And it does require the State to prove that a real child is being sexually exploited. This is an excellent bill to protect our children from predators, and I would urge that you all support the passage. Thank you.

(The Chair recognized Sen. Barnes for a question of Sen. Clegg.)

SENATOR BARNES: Thank you, Madam President. Sen. Clegg, you mentioned these "frequent flyers." This bill is going to help us ground those "frequent flyers"?

SENATOR CLEGG: Those "frequent flyers" will get harsher and harsher penalties every time they're caught.

SENATOR BARNES: Follow-up question. Here in New Hampshire, under current law, one of these bozos gets caught; what's the penalty, what happens to one of those people?

SENATOR CLEGG: Well, I can't tell you exactly what the penalty is, but I can tell you that possession of pornography and the actual manufacture of child pornography carries the same penalty, and I think that while possession is disgusting enough, anybody who actually manufactures the stuff and films two children or a child being raped ought to be much harsher than just looking at it.

SENATOR BARNES: So what is the penalty if that bozo gets caught?

SENATOR CLEGG: I'm not sure exactly what the penalty is under current law.

SENATOR BARNES: Do you think Sen. Foster might have that answer?

SENATOR CLEGG: No. We didn't look at penalty; we only looked at separating them or making them harsher. But I can look it up in the law book for you.

SENATOR BARNES: Well, I just hope they do something so they don't keep flying around. You know what my amendment was on the first law.

SENATOR CLEGG: It's not in this bill.

(The Chair recognized Sen. Letourneau to speak.)

SENATOR LETOURNEAU: Thank you. It would be difficult for me to add anything to that testimony, what they've said is absolutely true. What I want to say is I'm proud to have been a co-sponsor of this bill, and I appreciate the work of the Committee. We spent a lot of time on this, we had a long hearing, and we had a lot of difficult things to iron out. And I want to thank our attorney who worked with us carefully to help craft this amendment, and this thing works out to be very well. And to help Sen. Barnes, some of the penalties in here are up to 30 years in jail. And this particular bill will give the police additional tools to provide protection for our children. So this is not – these things are never

perfect, but it gives a lot of extra tools and it goes a long way to help out on this Internet pornography and this Internet solicitation. Thank you very much.

(The Chair recognized Sen. Reynolds to speak.)

SENATOR REYNOLDS: Thank you, Madam President. Madam President, as a member of the Judiciary Committee, I just want to rise in support of the bill. We heard some shocking and awful examples of how rampant this problem is, and it's even more problematic with the increasing use of technology, using cell phones to exchange pictures, camcorders. I've been a member of the New Hampshire Bar Association for over 25 years, and I'm proud to be a New Hampshire lawyer. But speaking as a parent of teenagers, I can tell you that with the use of social networking spaces, like "My Facebook" and "My Space," we really have to be vigilant in making sure that our children are protected. And I'm very proud to support this legislation and would urge my colleagues to vote ought to pass. Thank you, Madam President.

**The question is on the adoption of Committee Amendment 1066s.
Committee Amendment 1066s adopted.**

The question is on the adoption of Ought to Pass as Amended on SB 495-FN.

A roll call was requested by Sen. Gatsas, seconded by Sen. Barnes.

The following Senators voted Yes: Gallus, Reynolds, Kenney, Sgambati, Burling, Cilley, Janeway, Odell, Roberge, Kelly, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, DeVries, Letourneau, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.

The following Senator voted No: None.

Yeas: 24 - Nays: 0

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

MOTION TO REMOVE FROM THE TABLE

Sen. Downing moved to have SB 323-FN removed from the table.

Motion adopted.

SB 323-FN, relative to terms of release and notice of hearings in the parole of prisoners.

The question is on the committee recommendation of Ought to Pass.

Sen. Downing offered a floor amendment.

Sen. Downing, Dist. 22

Sen. Clegg, Dist. 14

March 20, 2008

2008-1098s

04/05

Floor Amendment to SB 323-FN

Amend the title of the bill by replacing it with the following:

AN ACT repealing a provision relative to the calculation of multiple concurrent or consecutive sentences of imprisonment.

Amend the bill by replacing all after the enacting clause with the following:

1 Repeal. RSA 651-A:6, II, relative to multiple concurrent or consecutive sentences of imprisonment, is repealed.

2 Effective Date. This act shall take effect 60 days after its passage.

2008-1098s

AMENDED ANALYSIS

This bill repeals a provision relative to the calculation of multiple concurrent or consecutive sentences of imprisonment.

SENATOR DOWNING: I'd like to offer a further amendment, Madam President.

PRESIDENT LARSEN: This is the appropriate time to offer a floor amendment. You may speak to the floor amendment as it's being distributed.

SENATOR DOWNING: The number is 2008-1098s. And the amendment actually gives it a new title, "repealing a provision relative to the calculation of multiple, concurrent or consecutive sentences of imprisonment." It just repeals part of RSA 651-A:6 because it conflicts with another part of the RSA. This would remove the confusion and would stop future lawsuits. It's at the request of the parole board.

(The Chair recognized Sen. Clegg to speak.)

SENATOR CLEGG: Thank you, Madam President. I want to point out to any press who's still here, and the ones downstairs listening, like the one for *The Telegraph* and *The Union Leader*, that we heard what their editors said when they called and said don't remove the ability or the mandate that we put into the newspapers, anybody coming up for parole. That's no longer part of this bill. We still will mandate – even after passage of this amendment and passage of the bill, we will still mandate the publishing of parole hearings. Thank you, Madam President.

(The Chair recognized Sen. Foster to speak.)

SENATOR FOSTER: I support the floor amendment as well. To be clear, and I think Sen. Downing was, but really what this does is just take out section 1 of the bill and leaves section 2 and 3, which this the Judiciary Committee had said ought to pass, and I think the body was probably ready to pass, but section 1 is out; now we just have 2 and 3, and they've been renumbered 1 and 2. Thank you.

The question is on the adoption of Floor Amendment 1098s.

Floor Amendment 1098s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 323-FN.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 373, relative to dental insurance coverage for members of the Manchester employees' contributory retirement system. Public and Municipal Affairs Committee. Ought to Pass with Amendment, Vote 4-1. Senator Hassan for the committee.

Public and Municipal Affairs

March 12, 2008

2008-0983s

10/09

Amendment to SB 373

Amend the title of the bill by replacing it with the following:

AN ACT relative to definitions for and the application of the civil unions law to the retirement system.

Amend the bill by replacing all after the enacting clause with the following:

1 New Section; Civil Unions. Amend RSA 100-A by inserting after RSA 100-A:2-a, the following new section:

100-A:2-b Civil Unions.

I. In this chapter, the following additional definitions shall apply:

(a) "Civil union partner" shall mean an individual who is a party to a civil union recognized under RSA 457-A.

(b) "Civil union partner's acknowledgement" means a written recognition, signed by a member's civil union partner, of the benefit payment plan selected by the member under the provisions of RSA 100-A:5, , RSA 100-A:6, RSA 100-A:10, or RSA 100-A:19-a, through RSA 100-A:19-h that is filed with the retirement system on a form prescribed by the board of trustees at the time of retirement and when the member elects a change in benefit payment as allowed under RSA 100-A:13.

(c) "Decree of divorce" and "divorce" shall include the dissolution of a civil union pursuant to RSA 457-A:7.

(d) "Married" shall include entered into a civil union recognized under RSA 457-A which, as of the relevant date, has not been dissolved pursuant to RSA 457-A:7 or by death.

(e) "Remarriage" shall include establishment of a civil union recognized under RSA 457-A.

(f) "Spousal acknowledgement" shall include a civil union partner's acknowledgement.

(g) "Spouse" shall include a member's civil union partner except under RSA 100-A:52, RSA 100-A:52-a, and RSA 100:52-b.

(h) "Surviving spouse" shall include a member's surviving civil union partner, except under RSA 100-A:52, RSA 100-A:52-a, and RSA 100:52-b.

(i) "Widow" or "widower" shall include a member's surviving civil union partner.

II. RSA 457-A and this section shall not apply to this chapter to the extent that such application will violate the Internal Revenue Code of 1986, as amended, or other federal law.

2 Effective Date. This act shall take effect upon its passage.

2008-0983s

AMENDED ANALYSIS

The bill adds definitions clarifying the application of RSA 457-A, the civil unions law.

SENATOR HASSAN: Thank you, Madam President. I move that Senate Bill 373 ought to pass with amendment. This amended bill has nothing to do with the Manchester Retirement System, but adds definitions which codify the application of RSA 457-A, the civil unions law, to the state retirement system. This was brought in at the state retirement system's request, and passage of this will bring needed clarity to the application of this new law to the retirement system. The Public and Municipal Affairs Committee asks for your support for this amended legislation. Thank you.

(The Chair recognized Sen. Barnes for a question of Sen. Hassan.)

SENATOR BARNES: Thank you, Sen. Hassan. As you remember, being chairman of the Committee, that I was the vote against it. So my question to you is, can you help me out with the amendment on (d) and (e), where it talks about –

SENATOR HASSAN: With permission, Senator, I don't have the amendment in front of me, so let me just grab it for a minute if we're going to talk about the text.

SENATOR BARNES: Sure.

SENATOR HASSAN: Which requires my finding my notebook.

SENATOR BARNES: I'll tell you what.

SENATOR HASSAN: Would you like to hand it to me?

SENATOR BARNES: Yeah, I'll give you what I have in my hand.

SENATOR HASSAN: Thank you.

SENATOR BARNES: When I see "marriage" in there, I remember when civil unions passed that everybody in this chamber said it wasn't marriage, and I see "marriage" in the amendment, and I can't quite understand why that's there.

SENATOR HASSAN: I am not an expert on this law or its application, Senator, but I will tell you that I think what it is saying is that for the purposes of eligibility for benefits, people – and it says people who have been entered into a civil union will be eligible for the same thing that people who are married are, which was the intent of the civil unions law.

SENATOR BARNES: Thank you, Senator.

The question is on the adoption of Committee Amendment 0983s.

Committee Amendment 0983s adopted.

Sen. Foster asserted Rule 42 on SB 373.

The question is on the adoption of Ought to Pass as Amended on SB 373.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

Sen. Foster asserted Rule 42 on SB 373.

Sen. Barnes is in opposition to SB 373.

MOTION TO REMOVE FROM THE TABLE

Sen. Hassan moved to have SB 342-FN-L removed from the table.

Motion adopted.

SB 342-FN-L, establishing a mechanism for expediting relief from municipal actions which deny, impede, or delay qualified proposals for workforce housing.

The question is on the adoption of Committee Amendment 0818s.

Public and Municipal Affairs

March 4, 2008

2008-0818s

06/09

Amendment to SB 342-FN-LOCAL

Amend the bill by replacing all after the enacting clause with the following:

1 Findings and Statement of Purpose.

I. The state of New Hampshire is experiencing a shortage of housing that is affordable to working households. This housing shortage poses a threat to the state's economic growth, presents a barrier to the expansion

of the state's labor force, undermines state efforts to foster a productive and self-reliant workforce, and adversely affects the ability of many communities to host new businesses.

II. Achieving a balanced supply of housing, which requires increasing the supply of workforce housing, serves a statewide public interest, and constitutes an urgent and compelling public policy goal.

III. The purpose of this act is to provide a simplified appeals mechanism for developments that propose the creation of workforce housing.

2 New Subdivision; Workforce Housing Opportunities. Amend RSA 674 by inserting after section 57 the following new subdivision:

Workforce Housing

674:58 In this subdivision:

I. "Affordable" means housing with combined rental and utility costs or combined mortgage and loan debt services, property taxes, and required insurance that do not exceed 30 percent of a household's gross annual income.

II. "Multi-family workforce housing" means a building or structure containing 5 or more dwelling units.

III. "Reasonable and realistic opportunities for the development of workforce housing" means opportunities to develop economically viable workforce housing within the framework of a municipality's ordinances and regulations adopted pursuant to this chapter and consistent with RSA 672:1, III-e. The collective impact of all such ordinances and regulations on a proposal for the development of workforce housing shall be considered in determining whether opportunities for the development of workforce housing are reasonable and realistic.

IV. "Workforce housing" means housing which is intended for sale and which is affordable to a household with an income of no more than 100 percent of the median income for a 4-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. "Workforce housing" also means rental housing, which is affordable to a household with an income of no more than 60 percent of the median income for a 3-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. Housing developments that exclude minor children from more than 20 percent of the units, or in which more than 50 percent of the dwelling units have fewer than 2 bedrooms, shall not constitute workforce housing for the purposes of this subdivision.

674:59 Workforce Housing Opportunities. In every municipality that exercises the power to adopt land use ordinances and regulations, such ordinances and regulations shall provide reasonable and realistic opportunities for the development of workforce housing, including multifamily workforce housing. In order to provide such realistic opportunities, lot size and overall density requirements for workforce housing shall be reasonable. Municipalities shall not use unreasonable requirements for inclusionary zoning to prevent the development of projects that include workforce housing supported by higher income housing.

674:60 Appeals.

I. Any person whose application to develop workforce housing is denied or is approved with conditions or restrictions which have a substantial adverse impact on the viability of the proposed workforce housing development may appeal the municipal action to the superior court. The appeal shall set forth how the municipal action violates the workforce housing requirements of RSA 674:59 or how the conditions or restrictions of ap-

proval have a substantial adverse impact on the viability of the proposal. The appeal shall specifically describe the order or action requested of the court. The petition to the court shall set forth how the denial is due to the municipality's failure to comply with the workforce housing requirements of RSA 674:59 or how the conditions or restrictions of approval have a substantial adverse impact on the viability of the proposal.

II. A hearing on the appeal shall be held within 6 months of the date on which the action was filed unless counsel for the parties agree to a later date, or the court so orders for good cause.

III. In order to expedite the appeal, either party may request the court to promptly appoint an impartial referee to hear the appeal. The parties shall bear the reasonable expenses of the referee.

3 Effective Date. This act shall take effect 60 days after its passage.

(The Chair recognized Sen. Hassan to speak to the committee amendment.)

SENATOR HASSAN: Thank you, Madam President. The committee amendment includes a Findings and Statement of Purpose section, alterations to the definition of "multi-family work housing [sic]," and addresses the issue of senior housing, using a different percentage of median income, and it also makes certain changes to the appeals section. I will note that after we vote on the committee amendment there are floor amendments to present. Thank you.

Recess/Out of Recess.

The question is on the adoption of Committee Amendment 0818s.

Committee Amendment 0818s adopted.

Sen. Fuller Clark offered a floor amendment.

Sen. Fuller Clark, Dist. 24

March 13, 2008

2008-1016s

06/10

Floor Amendment to SB 342-FN-LOCAL

Amend the bill by replacing all after the enacting clause with the following:

1 Findings and Statement of Purpose.

I. The state of New Hampshire is experiencing a shortage of housing that is affordable to working households. This housing shortage poses a threat to the state's economic growth, presents a barrier to the expansion of the state's labor force, undermines state efforts to foster a productive and self-reliant workforce, and adversely affects the ability of many communities to host new businesses.

II. Achieving a balanced supply of housing, which requires increasing the supply of workforce housing, serves a statewide public interest, and constitutes an urgent and compelling public policy goal.

III. The purpose of this act is to provide a simplified appeals mechanism for developments that propose the creation of workforce housing.

2 New Subdivision; Workforce Housing Opportunities. Amend RSA 674 by inserting after section 57 the following new subdivision:

Workforce Housing

674:58 In this subdivision:

I. "Affordable" means housing with combined rental and utility costs or combined mortgage and loan debt services, property taxes, and required insurance that do not exceed 30 percent of a household's gross annual income.

II. "Multi-family workforce housing" means a building or structure containing 5 or more dwelling units, each designed for occupancy by an individual household.

III. "Reasonable and realistic opportunities for the development of workforce housing" means opportunities to develop economically viable workforce housing within the framework of a municipality's ordinances and regulations adopted pursuant to this chapter and consistent with RSA 672:1, III-e. The collective impact of all such ordinances and regulations on a proposal for the development of workforce housing shall be considered in determining whether opportunities for the development of workforce housing are reasonable and realistic. If the ordinances and regulations of a municipality satisfy the obligation of the municipality under RSA 674:59, and such development is not unduly inhibited by natural features, no municipality shall be in violation of RSA 674:59 by virtue of economic conditions beyond the control of the municipality that affect the economic viability of workforce housing development.

IV. "Workforce housing" means housing which is intended for sale and which is affordable to a household with an income of no more than 100 percent of the median income for a 4-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. "Workforce housing" also means rental housing, which is affordable to a household with an income of no more than 60 percent of the median income for a 3-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. Housing developments that exclude minor children from more than 20 percent of the units, or in which more than 50 percent of the dwelling units have fewer than 2 bedrooms, shall not constitute workforce housing for the purposes of this subdivision.

674:59 Workforce Housing Opportunities.

I. In every municipality that exercises the power to adopt land use ordinances and regulations, such ordinances and regulations shall provide reasonable and realistic opportunities for the development of workforce housing, including multifamily workforce housing. In order to provide such realistic opportunities, lot size and overall density requirements for workforce housing shall be reasonable.

II. No municipality shall fulfill the requirements of this section by adopting voluntary inclusionary zoning provisions that rely on inducements that render workforce housing developments economically unviable.

III. A municipality that adopts land use ordinances and regulations may allow workforce housing to be located in a majority of, but not necessarily all, land areas in districts zoned to permit residential uses within the municipality.

IV. The existing housing stock of a municipality shall be taken into consideration in determining compliance with this section. If the existing housing stock of a municipality is sufficient to accommodate its fair share of the current and reasonably foreseeable regional need for such housing, the municipality shall be deemed to be in compliance with paragraph I.

V. Paragraph I shall not be construed to require municipalities to allow workforce housing that does not meet reasonable standards or conditions of approval related to environmental protection, water supply, sanitary disposal, traffic safety, and fire and life safety protection.

674:60 Appeals.

I. Any person whose application to develop workforce housing is denied or is approved with conditions or restrictions which have a substantial adverse impact on the viability of the proposed workforce housing development may appeal the municipal action to superior court under RSA 677:4 or RSA 677:15, seeking permission to develop the proposed workforce housing. The petition to the court shall set forth how the denial is due to the municipality's failure to comply with the workforce housing requirements of RSA 674:59 or how the conditions or restrictions of approval otherwise violate such requirements.

II. A hearing on the merits shall be held within 6 months of the date on which the action was filed unless counsel for the parties agree to a later date, or the court so orders for good cause. If the court determines that it will be unable to meet this requirement, at the request of either party it shall promptly appoint a referee to hear the appeal within 6 months. Referees shall be impartial, and shall be chosen on the basis of qualifications and experience in planning and zoning law.

3 Effective Date. This act shall take effect 60 days after its passage.

2008-1016s**AMENDED ANALYSIS**

This bill:

I. Requires municipalities that exercise the power to adopt land use ordinances to provide opportunities for the development of workforce housing.

II. Establishes a mechanism for expediting relief from municipal actions which deny, impede, or delay qualified proposals for workforce housing.

SENATOR FULLER CLARK: Thank you, Madam President. I have a floor amendment for Senate Bill 342, it is Floor Amendment 1016s. And I'd like to speak to this while it's being handed out.

PRESIDENT LARSEN: You may speak to it as it's being distributed.

SENATOR FULLER CLARK: These amendments simply provide further clarification and some additional changes so that it has been now possible to achieve the endorsement of the New Hampshire Municipal Association. And the New Hampshire Municipal Association worked with many different housing groups to reach the compromise on a number of terms that are presented in the amendment. Under the definitions section of the amendment, and that is, starts with line 17, if you would go to line 20, it now defines that "multiple workforce housing" adds a clause to state that the housing units are intended for occupancy by a single household. If you go down to line 22 it adds the language, "reasonable and realistic opportunities." And this amendment was created to recognize that there will be market conditions that may prevent workforce housing from being built, even when a municipality otherwise provides the opportunity for it through appropriate regulation and therefore no municipality will be punished in such circumstances. Under ... if you turn to page two on the amendment, on line – we start with line 10, "workforce housing opportunities," and we go down to section 2, on line 10, it simply breaks out this language into a Roman Numeral II that didn't exist before. And under Roman Numeral III it requires that a municipality to allow workforce housing in a significant portion of its area, but not in all areas. And I think that was of some concern. So it says on 20, "but not necessarily all land areas in the district zone to permit residential uses within the municipality." On line 22, on section 4, it provides relief

for those communities that have already provided for their fair share of workforce housing; it reads that "If the existing housing stock of municipality is sufficient to accommodate its fair share of the current and reasonably foreseeable regional need for such housing, the municipality shall be deemed to be in compliance." And on line five, Roman Numeral V on line 26, it makes it clear that it will not require municipalities to allow workforce housing that does not meet reasonable standards or conditions of approval related to environmental protections, water supply, sanitary disposal, traffic safety, and fire and life safety.

And finally, which is what the core of this bill is, which is to provide an expedited review so that various applications with regard to workforce housing are not held up an unduly long time, and it adds, under the appeals mechanism, it says that the amendment here will clarify that appeals, whether from a planning board decision or from a zoning board decision, they must follow existing statutes that call for such appeals to be made on record, as opposed to de novo appeals. And it also establishes the qualifications for referees to hear appeals. I know that's a little technical, but I thought it was important to go through those changes, because I think it should assure everybody that the municipalities still have the flexibility and the control over addressing these issues, but that again the core component of this bill is to provide an expedited review with regard to the appeals process.

(The Chair recognized Sen. Letourneau for a question of Sen. Fuller Clark.)

SENATOR LETOURNEAU: Thank you, Sen. Clark, for taking my question. On page two, line 22, Roman IV, it says, "The existing housing stock and municipality shall be taken into consideration," and it goes on to say that it's "sufficient to accommodate its fair share." What is the "fair share"? It's not spelled out in any type of percentage for a community. For example, say my Town of Derry has – say it had 26 percent of its housing was considered workforce housing, would that be a fair share? How do we figure out what "fair" is? And I guess another question could be, who makes that decision?

SENATOR FULLER CLARK: It's my understanding that that decision would be made by the courts.

SENATOR LETOURNEAU: So you'd have to go to court in order to get this resolved.

PRESIDENT LARSEN: Further question?

SENATOR LETOURNEAU: I didn't get an answer yet.

SENATOR FULLER CLARK: I said it's my understanding that what happens now is that if there is a challenge – first of all, it's specifies all of the – it says under workforce housing opportunities: "In every municipality that exercises the power to adopt land use ordinance and regulations, such ordinance and regulations shall provide reasonable and realistic opportunities for the development of workforce housing ..." If we go from House Bill 342 and we're going to go to House Bill 421, we will then have codified into statutes the law that has already been passed in the courts that determines "reasonable and realistic opportunities." So these are companion bills and we need to look at them together. The reason that we need to put that language into statute is because in many municipalities they are not aware that this court case has taken place, and that's basically how they fit together. So I hope that helps to answer your question.

SENATOR LETOURNEAU: Thank you.

(The Chair recognized Sen. Barnes for a question of Sen. Fuller Clark.)

SENATOR BARNES: Thank you, Madam President. Senator, during the hearing on this bill – I know you aren't on the committee, it was Sen. Hassan's committee – I believe the conversation from the Municipal Association was they were happy because it took care of clarifying the *Chester* 1993 decision. If you don't know where it is in here, maybe Sen. Hassan can lean over and show it to you.

SENATOR FULLER CLARK: The *Chester* '93 decision will be codified and is referred to in the companion legislation to this bill. So they work together. The focus of this bill was to address the issue of the appeals process and the expedited review.

SENATOR BARNES: Thank you, Senator. Thank you very much.

(The Chair recognized Sen. Hassan to speak.)

SENATOR HASSAN: Thank you, Madam President. Yeah, I just wanted to rise in support of this further amendment. There is existing law in the state that requires workforce or affordable housing in every community. But one of the impediments that we have is that if a municipality puts up barriers to such housing, the process for resolving whether or not they are following the law is very time – it takes a long time. And if you're in the development business, time is money and you go elsewhere to build your affordable housing, often in, in fact, other states. So this is intended to have a sensible and fair but expedited appeal process in the event that a developer feels that the municipality is somehow evading its responsibility under the law, a law that's been on the books for sometime. So I'd urge my colleagues to support this. This amendment is here because, as Sen. Fuller Clark referenced, the Municipal Association, along with some of the affordable housing advocates who have helped bring this bill forward, worked together to clarify a number of things that the Municipal Association was concerned about. Thank you.

The question is on the adoption of Floor Amendment 1016s.

Floor Amendment 1016s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 342-FN-L.

A roll call was requested by Sen. Hassan, seconded by Sen. Foster.

The following Senators voted Yes: Gallus, Reynolds, Kenney, Sgambati, Burling, Cilley, Janeway, Odell, Kelly, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, DeVries, Letourneau, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.

The following Senator voted No: Roberge.

Yeas: 23 - Nays: 1

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

MOTION TO REMOVE FROM THE TABLE

Sen. DeVries moved to have SB 421-L removed from the table.

Motion adopted.

SB 421-L, requiring municipal land use regulation to provide reasonable opportunities for the creation of workforce housing.

The question is on the adoption of Committee Amendment 0523s.

Sen. Fuller Clark, Dist. 24
February 12, 2008
2008-0523s
06/03

Amendment to SB 421-LOCAL

Amend the title of the bill by replacing it with the following:

AN ACT relative to workforce housing.

Amend the bill by replacing all after the enacting clause with the following:

1 Findings and Statement of Purpose.

I. The state of New Hampshire is experiencing a shortage of housing that is affordable to working households. This housing shortage poses a threat to the state's economic growth, presents a barrier to the expansion of the state's labor force, undermines state efforts to foster a productive and self-reliant workforce, and adversely affects the ability of many communities to host new businesses.

II. Achieving a balanced supply of housing, which requires increasing the supply of workforce housing, serves a statewide public interest, and constitutes an urgent and compelling public policy goal.

III. The purpose of this act is to clarify the requirements of Britton v. Chester, 134 N.H. 434 (1991), and to provide guidance for complying with those requirements to local officials and the public.

IV. The subdivision enacted in section 2 of this act is intended to provide the maximum feasible flexibility to municipalities in exercising the zoning powers under RSA 674 consistent with their obligation to provide reasonable opportunities for the development of workforce housing, and is not intended to create a system of statewide land use regulation or a statewide zoning process.

2 New Subdivision: Workforce Housing. Amend RSA 674 by inserting after section 57 the following new subdivision:

Workforce Housing

674:58 Definitions. In this subdivision

I. "Affordable" means housing with combined rental and utility costs or combined mortgage and loan debt services, property taxes, and required insurance that do not exceed 30 percent of a household's gross annual income.

II. "Multi-family workforce housing" means a building or structure containing 5 or more dwelling units.

III. "Reasonable and realistic opportunities for the development of workforce housing" means opportunities to develop economically viable workforce housing within the framework of a municipality's ordinances and regulations adopted pursuant to this chapter and consistent with RSA 672:1, III-e. The collective impact of all such ordinances and regulations on a proposal for the development of workforce housing shall be considered in determining whether opportunities for the development of workforce housing are reasonable and realistic.

IV. "Workforce housing" means housing which is intended for sale and which is affordable to a household with an income of no more than 100 percent of the median income for a 4-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. "Workforce Housing" also means rental housing which is affordable to a household with an income of no more than 60 percent of

the median income for a 3-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. Housing developments that exclude minor children from more than 20 percent of the units, or in which more than 50 percent of the dwelling units have fewer than 2 bedrooms, shall not constitute workforce housing for the purposes of this subdivision.

674:59 Workforce Housing Opportunities. In every municipality that exercises the power to adopt land use ordinances and regulations, such ordinances and regulations shall provide reasonable and realistic opportunities for the development of workforce housing, including multi-family workforce housing. In order to provide such realistic opportunities, lot size and overall density requirements for workforce housing shall be reasonable. Municipalities shall not use unreasonable requirements for inclusionary zoning to prevent the development of projects that include workforce housing supported by higher income housing.

3 Declaration of Purpose. Amend RSA 672:1, III-e to read as follows:

III-e. All citizens of the state benefit from a balanced supply of housing which is affordable to persons and families of low and moderate income. Establishment of housing which is decent, safe, sanitary, and affordable to low and moderate income persons and families is in the best interests of each community and the state of New Hampshire, and serves a vital public need. Opportunity for development of such housing, including so-called cluster development and the development of multi-family structures, [should] **shall** not be prohibited or discouraged by use of municipal planning and zoning powers or by unreasonable interpretation of such powers.

4 Effective Date. This act shall take effect 60 days after its passage.

2008-0523s

AMENDED ANALYSIS

This bill declares it to be the policy of planning and zoning regulation in the state that municipalities have an obligation to provide reasonable and realistic opportunities for the development of workforce housing.

(The Chair recognized Sen. DeVries to speak to the legislation.)

SENATOR DEVRIES: Thank you, Madam President. I move that Senate Bill 421-Local ought to pass with amendment. This amended bill declares it to be the policy of planning and zoning regulation in the state that municipalities have an obligation to provide reasonable and realistic opportunities for the development of workforce housing. In testimony it was noted that this bill brings clarity to New Hampshire's role in workforce housing by putting several definitions related to the issue in statute and by codifying the standards set in 1991, New Hampshire Supreme Court case, *Britton v. Chester*. This bill provides needed guidance on this important topic that has a major impact on our state's economic future. The Public and Municipal Affairs Committee asks for your support of this amended bill. I would note that there will be a floor amendment offered on this bill, and I thank you.

Recess/Out of Recess.

The question is on the adoption of Committee Amendment 0523s

(The Chair recognized Sen. Gottesman to speak.)

SENATOR GOTTESMAN: Thank you, Madam President. I called for the recess because I was looking at two bills that looked like they had

the very same provisions in it, and in fact much of it is duplicated. Whoever came up with the strategy here wanted to have parallel bills running in case certain provisions of one did not prevail. Evidently, after speaking to OLS, these can be passed, they will track them in the House, and they will marry the bills together somewhere along the way, or it will be fixed in the enrolling process. So I would recommend then voting for the bill.

The question is on the adoption of Committee Amendment 0523s. Committee Amendment 0523s adopted.

Sen. Fuller Clark offered a floor amendment.

Sen. Fuller Clark, Dist. 24

March 13, 2008

2008-1015s

06/10

Floor Amendment to SB 421-LOCAL

Amend the title of the bill by replacing it with the following:

AN ACT relative to workforce housing.

Amend the bill by replacing all after the enacting clause with the following:

1 Findings and Statement of Purpose.

I. The state of New Hampshire is experiencing a shortage of housing that is affordable to working households. This housing shortage poses a threat to the state's economic growth, presents a barrier to the expansion of the state's labor force, undermines state efforts to foster a productive and self-reliant workforce, and adversely affects the ability of many communities to host new businesses.

II. Achieving a balanced supply of housing, which requires increasing the supply of workforce housing, serves a statewide public interest, and constitutes an urgent and compelling public policy goal.

III. The purpose of this act is to clarify the requirements of *Britton v. Chester*, 134 N.H. 434 (1991), and to provide guidance for complying with those requirements to local officials and the public.

IV. The subdivision enacted in section 2 of this act is intended to provide the maximum feasible flexibility to municipalities in exercising the zoning powers under RSA 674 consistent with their obligation to provide reasonable opportunities for the development of workforce housing, and is not intended to create a system of statewide land use regulation or a statewide zoning process.

2 New Subdivision: Workforce Housing. Amend RSA 674 by inserting after section 57 the following new subdivision:

Workforce Housing

674:58 Definitions. In this subdivision

I. "Affordable" means housing with combined rental and utility costs or combined mortgage and loan debt services, property taxes, and required insurance that do not exceed 30 percent of a household's gross annual income.

II. "Multi-family workforce housing" means a building or structure containing 5 or more dwelling units, each designed for occupancy by an individual household.

III. "Reasonable and realistic opportunities for the development of workforce housing" means opportunities to develop economically viable workforce housing within the framework of a municipality's ordinances

and regulations adopted pursuant to this chapter and consistent with RSA 672:1, III-e. The collective impact of all such ordinances and regulations on a proposal for the development of workforce housing shall be considered in determining whether opportunities for the development of workforce housing are reasonable and realistic. If the ordinances and regulations of a municipality satisfy the obligation of the municipality under RSA 674:59, and such development is not unduly inhibited by natural features, no municipality shall be in violation of RSA 674: 59 by virtue of economic conditions beyond the control of the municipality that affect the economic viability of workforce housing development.

IV. "Workforce housing" means housing which is intended for sale and which is affordable to a household with an income of no more than 100 percent of the median income for a 4-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. "Workforce Housing" also means rental housing which is affordable to a household with an income of no more than 60 percent of the median income for a 3-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. Housing developments that exclude minor children from more than 20 percent of the units, or in which more than 50 percent of the dwelling units have fewer than 2 bedrooms, shall not constitute workforce housing for the purposes of this subdivision.

674:59 Workforce Housing Opportunities.

I. In every municipality that exercises the power to adopt land use ordinances and regulations, such ordinances and regulations shall provide reasonable and realistic opportunities for the development of workforce housing, including multi-family workforce housing. In order to provide such realistic opportunities, lot size and overall density requirements for workforce housing shall be reasonable.

II. No municipality shall fulfill the requirements of this section by adopting voluntary inclusionary zoning provisions that rely on inducements that render workforce housing developments economically unviable.

III. A municipality that adopts land use ordinances and regulations may allow workforce housing to be located in a majority of, but not necessarily all, land areas in districts zoned to permit residential uses within the municipality.

IV. The housing stock of a municipality shall be taken into consideration in determining compliance with this section. If the existing housing stock of a municipality is sufficient to accommodate its fair share of the current and reasonably foreseeable regional need for such housing, the municipality shall be deemed to be in compliance with paragraph I.

V. Paragraph I shall not be construed to require municipalities to allow workforce housing that does not meet reasonable standards or conditions of approval related to environmental protection, water supply, sanitary disposal, traffic safety, and fire and life safety protection.

3 Declaration of Purpose. Amend RSA 672:1, III-e to read as follows:

III-e. All citizens of the state benefit from a balanced supply of housing which is affordable to persons and families of low and moderate income. Establishment of housing which is decent, safe, sanitary, and affordable to low and moderate income persons and families is in the best interests of each community and the state of New Hampshire, and

serves a vital public need. Opportunity for development of such housing, including so-called cluster development and the development of multi-family structures, [should] **shall** not be prohibited or discouraged by use of municipal planning and zoning powers or by unreasonable interpretation of such powers.

4 Effective Date. This act shall take effect 60 days after its passage.

2008-1015s

AMENDED ANALYSIS

This bill:

I. Declares it to be the policy of planning and zoning regulation in the state that municipalities have an obligation to provide reasonable and realistic opportunities for the development of workforce housing.

II. Requires municipalities that exercise the power to adopt land use ordinances to provide reasonable opportunities for the development of workforce housing.

SENATOR FULLER CLARK: Yes. Thank you very much. I now would like to refer you to the amendment of 1015s. This is a floor amendment to Senate Bill 421, and it includes all of the same changes that I went through for the previous bill, with the exception, if you turn to page three, the language on line 2, the declaration of purpose, where it reads that, "All citizens in the state benefit from a balanced supply of housing which is affordable to persons and families of low and moderate income. Establishment of housing which is decent, safe, sanitary and affordable to low and moderate income persons and families is in the best interest of each community and the State of New Hampshire, and serves a vital public need. Opportunity for development of such housing, including so-called 'cluster development' and the development of multi-family structures ..." and here you see the only change: "... shall not be prohibited or discouraged by use of municipal planning and zoning powers or by unreasonable interpretation of such powers." So in addition to making the language identical in both of these bills, the only other change that occurs in this, through the floor amendment, is changing the word "should" to "shall." Thank you.

The question is on the adoption of Floor Amendment 1015s.

Floor Amendment 1015s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 421-L.

A roll call was requested by Sen. Hassan, seconded by Sen. Burling.

The following Senators voted Yes: Gallus, Reynolds, Kenney, Sgambati, Burling, Cilley, Janeway, Odell, Kelly, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, DeVries, Letourneau, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.

The following Senator voted No: Roberge.

Yeas: 23 - Nays: 1

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 414, authorizing special elections to fill vacancies on local boards. Public and Municipal Affairs Committee. Ought to Pass with Amendment, Vote 5-0. Senator Barnes for the committee.

Public and Municipal Affairs
March 12, 2008
2008-0985s
03/09

Amendment to SB 414

Amend the title of the bill by replacing it with the following:

AN ACT authorizing special elections to fill vacancies in elective town offices.

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraph; Vacancies in Town Offices. Amend RSA 669:61 by inserting after paragraph III the following new paragraph:

IV. The legislative body of a town may adopt the optional procedure in this paragraph for filling vacancies in elective town offices. If the authorized person or body does not make an appointment to fill the vacancy pursuant to paragraph I within 45 days after at least one legally-qualified person has applied in writing for such appointment, then upon the filing of a petition with the selectmen signed by the number of voters required under RSA 39:3 for the warning of a special town meeting, presented not less than 90 days before the next annual town meeting, the selectmen shall call a special election to fill the vacancy. The special election shall be subject to the provisions of RSA 39:3 and other applicable provisions governing town elections. The person elected at the special election shall serve for a term ending upon the election and qualification of his or her successor. Unless otherwise provided, at the next annual town election, the voters of the town shall elect an officer for the full term provided by law or the balance of an unexpired term provided by law, as the case may be. If the town then refuses or neglects to fill the office, a vacancy shall be deemed again to exist.

2 Filling of Vacancies; Selectmen. Amend RSA 669:63 to read as follows:

669:63 Selectmen. Vacancies in the board of selectmen shall be filled by appointment made by the remaining selectmen. Whenever the selectmen fail to make such appointment, the superior court or any justice thereof, on petition of any citizen of the town, and after such notice as the court shall deem reasonable, may appoint a suitable person to fill the vacancy; ***provided, however, that if the town has adopted the provisions of RSA 669:61, IV, and a petition thereunder is submitted before the submission of a petition under this section, the provisions of RSA 669:61, IV, shall apply.***

3 Effective Date. This act shall take effect 60 days after its passage.

2008-0985s

AMENDED ANALYSIS

This bill authorizes towns to hold special elections to fill vacancies in elective town offices when: (1) the town has adopted the special election procedure; (2) the person or body authorized to fill the vacancy does not do so within 45 days of a person applying for appointment to the vacant office; and (3) a sufficient number of voters petition the selectmen for a special election.

SENATOR BARNES: Thank you, Madam President. I've been waiting ten hours to present this. (Laughter) I move that Senate Bill 414 ought to pass with an amendment. This amended bill authorizes towns to hold special elections to fill vacancies in elective town offices when the town

has adopted the special election procedure, the person or body authorized to fill a vacancy does not do so within 45 days of a person applying for appointment to the vacant office, and a sufficient number of voters petition their selectmen for a special election. This legislation gives another option for towns seeking to fill vacancies of elective town offices with the hope that this creates smoother transitions for towns facing such an issue. The Public and Municipal Affairs Committee asks for your vote for this amended bill, and I thank you for that. The reason I brought this bill in, I'm the prime sponsor of it, because of a problem, and it's been in a lot of other towns, we had it in Raymond where a selectman passed away, a five-member board; it became a real donnybrook, 2-2 vote. Somebody came in, they turned people down; it took them a long time to do it, animosity was all over the town, people were mad and angry at each other. And I went to the town clerk and I said: Right now this can go to court unless these guys get together and select somebody. She says, "That's right." You want me to quiet down. Well, I've been waiting since 8 o'clock, or 10 o'clock, so I've got a right to stand up here, Sen. Gatsas. You were up here long enough on some of your bills. Excuse me, Madam President. I'm just busting on the –

PRESIDENT LARSEN: Keep on the topic of the bill (laughing).

SENATOR BARNES: I'm just busting on the minority leader here. So, my town clerk told me that the special election in the Town of Raymond, which has about 10,000 voters, is a cheaper way to go than going through the court system. So that's why I put it in, trying to make it easier and more friendly in some of the towns out there that have that problem. Thank you.

The question is on the adoption of Committee Amendment 0985s. Committee Amendment 0985s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 414.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 457, extending the veterans' property tax credit to all honorably discharged veterans. Public and Municipal Affairs Committee. Inexpedient to Legislate, Vote 5-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Madam President. I move Senate Bill 457 inexpedient to legislate. This bill changes the eligibility for persons receiving the veterans' property tax credit to include all veterans who served for not less than one year and who have been honorably discharged or officers honorably separated from the service. The changes apply only after adoption by municipalities pursuant to RSA 72:27-a. While the Committee wholeheartedly supports the service of our veterans, the major concern with this bill is the possibility that towns would be put in an extremely difficult financial situation regarding how to determine the size of the credit. The bill also raised questions over the extension of the credit to other groups if this change is made. The Public and Municipal Affairs Committee respectfully asks for your vote of ITL on this bill.

(The Chair recognized Sen. Kenney to speak.)

SENATOR KENNEY: I rise in opposition of the committee report of ITL on Senate Bill 457. My good friend from Raymond and I have opposite position on this bill, and I'll explain my position and it's quite simply

this: Over the years I've been approached by numerous veterans in my district who have served between that period of 1955 to 1961 who served in all branches of the service, who presently are ineligible to receive the veterans' property tax credit. And they served honorably, they served in all parts of the globe; they served in Liberia, watching submarines off the coast of Nova Scotia and making sure that they were protecting the home front; they served in Cuba during the Cuban Missile Crisis; they served in the Azores; they served in the South Pacific. But this one problem is that they're not eligible for the property tax exemption because they did not receive an operational medal, nor were they in a conflict such as Vietnam or Korea. These veterans who have come to me are older, they are on fixed incomes. And I think what the State of New Hampshire has done, not purposely, but they've created two classes of veterans, and I think that's wrong. I think that we need to accept the fact that we have veterans who served in combat, veterans who helped support the combat operations but who are not eligible for this property tax exemption. And I would hope that, you know, that we would see otherwise when it comes to a vote on this bill. Lastly, I'll just point out one aspect of the bill. It's local control, it's a local-option bill. A community does not have to go ahead and vote this in. In fact, they don't even have to put it on the ballot. But it should be an option for those veterans in the community who honorably served, who presently are ineligible. And as I understand, there's probably about 90 to a hundred communities that have veterans' exemptions that receive a veteran's property tax credit. So with that, Madam President, I'll sit down

The question is on the adoption of the committee recommendation of Inexpedient to Legislate on SB 457.

A division vote was requested.

Yeas: 19 - Nays: 5

Motion of Inexpedient to Legislate adopted.

Senators Clegg and Kenney are in opposition to the motion of Inexpedient to Legislate on SB 457.

SB 462, limiting liability for overseers of public welfare when acting in the course of their official duties. Public and Municipal Affairs Committee. Ought to Pass, Vote 4-1. Senator Burling for the committee.

SENATOR BURLING: Thank you, Madam President. I move Senate Bill 462 ought to pass. This bill limits the liability for overseers of public welfare when acting in the course of their official duties. The issue of their liability came to our attention last year. This bill takes care of the problem of individual liability on the overseers of public welfare; it also adds gender neutrality to the RSA in question. Thank you, Madam President. We move ought to pass.

The question is on the adoption of the committee recommendation of Ought to Pass on SB 462.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 471, allowing local building codes to add requirements for installation and inspection of heating and ventilation systems. Public and Municipal Affairs Committee. Inexpedient to Legislate, Vote 4-1. Senator Burling for the committee.

SENATOR BURLING: Thank you, Madam President. I move Senate Bill 471 inexpedient to legislate. This bill would allow municipalities

to adopt local amendments to the state building code concerning the installation and inspection of heating and ventilation system duct and vent work. The trouble is, all of that's already part of a law. The Committee understands the intent, but we don't need to amend the statute further to provide for it. The Public and Municipal Affairs Committee respectfully requests your vote of inexpedient to legislate on this legislation.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on SB 471.

Motion of Inexpedient to Legislate adopted.

SB 474, relative to registers of deeds and reports of county officers. Public and Municipal Affairs Committee. Ought to Pass with Amendment, Vote 5-0. Senator DeVries for the committee.

Public and Municipal Affairs

March 12, 2008

2008-0984s

10/05

Amendment to SB 474

Amend the bill by deleting section 6 and renumbering the original sections 7-14 to read as 6-13, respectively.

Amend the bill by replacing section 8 with the following:

8 Office Hours; Registers of Deeds; Gender Neutral. Amend RSA 478:13 to read as follows:

478:13 Office Hours. Every register shall keep his *or her* office open daily except Sundays and state holidays. It may be closed on Saturday if not incompatible with public business; provided, however, that the register may keep his *or her* office open on Saturday mornings in the custody of a single custodian whenever he *or she* deems it necessary.

SENATOR DEVRIES: Thank you, Madam President. I move that Senate Bill 474 ought to pass with amendment. This amended bill makes various changes to the laws concerning registers of deeds and also repeals certain requirements for reports of income of county officers. The Committee heard in testimony that this bill was a collection of various housekeeping changes which include gender neutrality in reference to the use of new technologies. The amendment removes potential changes regarding holidays and the discharge of deputies. The Public and Municipal Affairs Committee requests your support for Senate Bill 474 with amendment. Thank you.

The question is on the adoption of Committee Amendment 0984s.

Committee Amendment 0984s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 474.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 542, relative to a mediated settlement dispute in the town of Rye. Public and Municipal Affairs Committee. Ought to Pass, Vote 5-0. Senator Burling for the committee.

SENATOR BURLING: Thank you, Madam President. I move Senate Bill 542 ought to pass. This action will authorize a mediated settlement between the Town of Rye and a private landowner which settles a difficult boundary dispute on the corner of a piece of land owned by

the town. It is a classic boundary dispute: two surveys, both could be absolutely accurate. They couldn't figure out which one to go with, so the mediated settlement divided the calf, as it were. That requires legislative approval because of the ownership of the land. The Public and Municipal Affairs Committee asks for your vote in support of Senate Bill 542. Thank you, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on SB 542.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

MOTION TO REMOVE FROM THE TABLE

Sen. Sgambati moved to have SB 489 removed from the table.

Motion adopted.

SB 489, establishing a commission to study erecting a fire tower on Copple Crown mountain in Wolfeboro.

The question is on the adoption of Committee Amendment 0825s.

Public and Municipal Affairs

March 4, 2008

2008-0825s

04/01

Amendment to SB 489

Amend the title of the bill by replacing it with the following:

AN ACT establishing a commission to study erecting a fire tower on Copple Crown mountain in Brookfield.

Amend the bill by replacing all after the enacting clause with the following:

1 Commission Established. There is established a commission to study erecting a fire tower on Copple Crown mountain in Brookfield.

2 Membership and Compensation.

I. The members of the commission shall be as follows:

(a) One member of the senate, appointed by the president of the senate.

(b) Three members of the house of representatives, appointed by the speaker of the house of representatives.

(c) One member from the forest protection bureau, division of forests and lands, department of resources and economic development, appointed by the director of the division of forests and lands.

II. Legislative members of the commission shall receive mileage at the legislative rate when attending to the duties of the commission.

3 Duties. The commission shall study erecting a fire tower on Copple Crown mountain in Brookfield. The commission may solicit and receive information and testimony from any individual or organization with information relevant to the commission's objectives.

4 Chairperson; Quorum. The members of the commission shall elect a chairperson from among the members. The first meeting of the commission shall be called by the first-named senate member. The first meeting of the commission shall be held within 45 days of the effective date of this section. Two members of the commission shall constitute a quorum.

5 Report. The commission shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2008.

6 Effective Date. This act shall take effect upon its passage.

2008-0825s**AMENDED ANALYSIS**

This bill establishes a commission to study erecting a fire tower on Copple Crown mountain in Brookfield.

(The Chair recognized Sen. Sgambati to speak to the legislation.)

SENATOR SGAMBATI: Yes. And thank you, Madam President. I also have a floor amendment that I'd ask the body to consider. The intent of the bill as amended was to establish a commission to study the need for erecting a fire tower on Copple Crown Mountain in New Hampshire. There were some concerns raised by the Lakes Region Conservation Trust that, in fact, they owned a great deal of that property. So the floor amendment adds one member of the Lakes Region Conservation Commission to be appointed by the organization, and it changes the quorum requirements, given that one group was added. I would like to add that it is my hope that, because there are some concerns about land in the Conservation Trust, that the study commission would focus on whether this should happen, not how it should happen, in response to concerns by the Conservation Trust. So we'd ask you to vote on the floor amendment, as ought to pass, or the –

PRESIDENT LARSEN: The first order of business, this bill is on Second Reading, and the first order of business is the committee amendment.

SENATOR SGAMBATI: Okay. I would ask the body to consider and to vote ought to pass as amended on the committee amendment.

The question is on the adoption of Committee Amendment 0825s.

Committee Amendment 0825s adopted.

Sen. Sgambati offered a floor amendment.

Sen. Sgambati, Dist. 4

March 19, 2008

2008-1083s

04/09

Floor Amendment to SB 489

Amend paragraph I of section 2 of the bill by inserting after subparagraph (c) the following new subparagraph:

(d) One member from the Lakes Region Conservation Trust, appointed by that organization.

Amend the bill by replacing section 4 with the following:

4 Chairperson; Quorum. The members of the commission shall elect a chairperson from among the members. The first meeting of the commission shall be called by the first-named senate member. The first meeting of the commission shall be held within 45 days of the effective date of this section. Five members of the commission shall constitute a quorum.

SENATOR SGAMBATI: I would ask that we consider Floor Amendment 1083. That was the amendment that I just referenced that added a member of the Lakes Region Conservation Trust, and I would ask ought to pass. Thank you.

The question is on the adoption of Floor Amendment 1083s.

Floor Amendment 1083s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 489.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 416, relative to subdivision and site plan regulation waivers. Public and Municipal Affairs Committee. Ought to Pass with Amendment, Vote 5-0. Senator Burling for the committee.

Sen. Burling, Dist. 5

March 17, 2008

2008-1042s

03/04

Amendment to SB 416

Amend RSA 674:36, II(n)(2) as inserted by section 1 of the bill by replacing it with the following:

(2) The evidence before the planning board demonstrates that the granting of the waiver would better serve the public interest, and the granting of the waiver would not be contrary to the spirit and intent of the regulations.

Amend RSA 674:44, III(e) as inserted by section 2 of the bill by replacing it with the following:

(2) The evidence before the planning board demonstrates that the granting of the waiver would better serve the public interest, and the granting of the waiver would not be contrary to the spirit and intent of the regulations.

SENATOR BURLING: Thank you, Madam President. I move Senate Bill 416 ought to pass with amendment. This bill is in response to a Supreme Court decision which significantly tightened restrictions on planning boards seeking to waive provisions in their own site plan regulations. The Court has made it very clear that under existing law a waiver may be granted only following a finding of fact that conformity with the strict provisions of the regulations would pose a hardship to the applicant. The amendment proposed by the Committee allows not only for a so-called "strict conformity hardship" application for waiver, but also application and granting of a waiver upon a finding that the outcome would be a better public good, an improvement in the overall project by waiving the strict provisions of the ordinance. The Public and Municipal Affairs Committee asks for your support of Senate Bill 416 with amendment. Thank you, Madam President.

(The Chair recognized Sen. Gatsas for a question of Sen. Burling.)

SENATOR GATSAS: Thank you, Madam President. Thank you, Senator. How does this react with the two bills that we just passed for affordable housing?

SENATOR BURLING: I really haven't a clue. (Laughter) In all honesty, I hadn't thought of the issue. This bill deals with the narrow question of when a planning board applying its own regulation can waive a provision. The provision in the Supreme Court case was a provision that required a double-connection road; in other words, you went in on one and came out on another part of the same state highway, and the developer wanted to do a cul-de-sac because he thought it would be a huge improvement. The Supreme Court said you can't have the cul-de-sac 'cause you haven't got a proof that it's an undue hardship to you. Application of the amendment which we crafted would simply say the planning board could also waive if it found, as a matter of fact, on the evidence, that it would be an improvement to the public good by having the waiver. So ... is there a possibility of application -

SENATOR GATSAS: There's enough lawyers in here, I would assume that if I was onto something that one of them would've jumped out of the chair. Maybe it's too late. Maybe it's too late to assume.

SENATOR BURLING: If I may.

PRESIDENT LARSEN: Further comment.

SENATOR BURLING: I would say, Senator, having spent 11 years as a chairman of a planning board and now entering my 40th year as a lawyer, I would love to have this passed just because every planning board member has been through an experience where you see something that really would make it better, but your own regulations don't let you do it. So I think this would be an appropriate sort of "flexing of the waistband," if you will. It allows for elasticity.

(The Chair recognized Sen. Foster to speak.)

SENATOR FOSTER: I rarely do this, but I'm going to oppose the Committee on this. I served on a planning board, too, and, near as I can tell, this just allows the planning board to override ordinances when they feel like it. It says "public interest." I read the hearing report and that was my instinct, and that's kind of what it says. Most of the time planning boards will do the right thing, but a planning board's a planning board, and when you take away the restrictions they can also do not-so-smart things. So I just don't think there's enough teeth in it. It's not the committee amendment, it's the purpose of the bill. I understand the intent, but I'm uncomfortable with it. Thank you, Madam President.

The question is on the adoption of Committee Amendment 1042s. Committee Amendment 1042s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 416.

A roll call was requested by Sen. Gatsas, seconded by Sen. Barnes.

The following Senators voted Yes: Reynolds, Sgambati, Burling, Cilley, Janeway, Odell, Roberge, Kelly, Bragdon, Gottesman, Clegg, Larsen, Barnes, Letourneau, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Kenney, Foster, Gatsas, DeVries, D'Allesandro, Estabrook, Downing.

Yeas: 16 - Nays: 8

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 341, prohibiting digital advertising devices on certain highways. Transportation and Interstate Cooperation Committee. Ought to Pass with Amendment, Vote 4-1. Senator Clegg for the committee.

Transportation and Interstate Cooperation

March 12, 2008

2008-0993s

06/09

Amendment to SB 341

Amend RSA 236:74, III as inserted by section 1 of the bill by replacing it with the following:

III. Lighting.

(a) Except as provided in subparagraph (b), advertising devices located in federal highway or turnpike adjacent areas may be lighted, subject [only] to such restriction with respect to devices to be erected as may from time to time be prescribed by the commissioner.

(b) Advertising devices which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited, except those giving public service information such as time, date, temperature, weather, public safety, or similar information.

SENATOR CLEGG: Thank you, Madam President. I move Senate Bill 341 ought to pass with amendment. The legislation as introduced prohibits flashing, intermittent, or moving lights on advertising devices on certain New Hampshire highways. The Committee had some concerns with the bill as introduced. The amendment clarifies that advertising devices which are illuminated by any flashing, intermittent or moving lights are prohibited except for those giving public service information such as the time, date, temperature, weather, public safety, or other similar information. The Committee's intent is not to prohibit DOT from regulating signs based on the "blinding and dazzling" standard which they currently use, but to clearly allow signs erected for public safety informational purposes. The Transportation Committee recommends Senate Bill 341 be adopted as amended, and asks for your support. But I will tell you that there was an error noted by the sponsor, so there may be a change in that recommendation.

(The Chair recognized Sen. Fuller Clark to speak.)

SENATOR FULLER CLARK: I rise with objection to the committee amendment. The committee amendment eliminated the following language: "Light emitting diodes shall not be used to alter the face of an existing static billboard." The intent of this legislation is to ensure that digital signs are not allowed on state and federal highways. By removing this language, there are billboards that have already been approved that could be altered if this language is not reinstated. So it actually would impede the intent of this legislation. So I would ask that you kill the amendment and pass the bill as it was originally submitted. And just let me explain to you what these digital billboards are, in case you don't know. They are these huge billboards, but any existing billboard, without this language, could be turned into one of these billboards where every four to six seconds they change the message on the billboard, and it is not safe, it is not energy-efficient, and it is unsightly.

(The Chair recognized Sen. Gatsas for a question of Sen. Fuller Clark.)

SENATOR GATSAS: Senator, you're aware that in Manchester, Elm Street is a state highway and it is dead end at both ends, and some of those ...

SENATOR FULLER CLARK: Have been erected.

SENATOR GATSAS: And they're there.

SENATOR FULLER CLARK: And they're there.

SENATOR GATSAS: Follow-up question? Your intent is not to remove those.

SENATOR FULLER CLARK: No, this is going forward so that we don't have any more of those in the state. But there's also the issue of regulating off-premise and on-premise signs. Basically, the regulation of on-

premise signs is controlled by the municipalities, it's not controlled by the State. But as long as they're off-premise signs we would not – they could not be converted into digital billboards.

SENATOR GATSAS: Follow-up? "On-premise," you mean State-owned property.

SENATOR FULLER CLARK: No, on-premise, I mean if it is a sign that is advertising the business that is located on that premise, that is controlled by municipalities, it's not controlled by the State.

SENATOR GATSAS: On-site.

SENATOR FULLER CLARK: On-site.

SENATOR GATSAS: Okay.

(The Chair recognized Sen. Barnes for a question of Sen. Fuller Clark.)

SENATOR BARNES: Thank you, Senator. If we pass this the way you want, –

SENATOR FULLER CLARK: Yes.

SENATOR BARNES: – and let's take this Manchester situation as an example.

SENATOR FULLER CLARK: Yes.

SENATOR BARNES: There are businesses on that road that have this type of sign. Now, if you and I come along and say we're going to open up "Martha and Jack's" hotdog stand on that road someplace, we're going to take over the spot and we're going to do it, is this going to prohibit you and I from competing with our competitor who's got a pizza place next door but who has a sign, but we can't have a sign?

SENATOR FULLER CLARK: You can still have a sign; you just wouldn't be allowed to have one of those flashing digital signs, and if those –

SENATOR BARNES: So you and I, you and I are going to be at a great disadvantage, because that guy next door to us has got that sucker blinking and you and I can't blink.

SENATOR FULLER CLARK: But that's a municipality, that's an on-premise sign to promote the business. This is not what's controlling this. But if those digital signs that we see in Manchester already are promoting something other than what that business is, they're not allowed to do that.

PRESIDENT LARSEN: Follow-up question, Sen. Barnes.

SENATOR BARNES: Thank you. So if we do what you want, you and I can still have that sign at our business.

SENATOR FULLER CLARK: That is correct.

SENATOR BARNES: Thank you, Senator.

The question is on the adoption of Committee Amendment 0993s.

A division vote was requested.

PARLIAMENTARY INQUIRY

SENATOR BARNES: Parliamentary inquiry. We're voting on what the Committee came out with? This isn't what Sen. Clark wants.

PRESIDENT LARSEN: That is correct.

SENATOR BARNES: Okay, thank you.

**The question is on the adoption of Committee Amendment 0993s.
A division vote had been requested.**

Yeas: 5 - Nays: 17

Committee Amendment 0993s failed.

(The Chair recognized Sen. Gatsas to speak.)

SENATOR GATSAS: Thank you, Madam President. This piece of legislation seriously affects the main street of Manchester, New Hampshire. Seriously affects it because there are a lot of signs on that street; where that's a highway, that affects them. Because a lot of those signs don't advertise the premise, they advertise something else. Eliminating that is going to cause hardship to the community and to those businesses. Now, I understand maybe it doesn't affect anybody anywhere else, but it's probably going to affect Route 1 in Hampton, 'cause there are some signs there also, and not all of them advertise the premise. So I'm not too sure what we're doing here. But there are businesses that are going to be affected. The unintended consequence could be very great. Thank you, Madam President.

(The Chair recognized Sen. Barnes for a question of Sen. Gatsas.)

SENATOR BARNES: Yeah, thank you, Madam President, of Sen. Gatsas. Sen. Gatsas, I thought I just heard – jeez, I know it's getting late, and I know my ears are probably closing up, but didn't I hear just a few minutes ago that businesses aren't going to be affected? That's what I think I just heard Sen. Martha Fuller Clark say.

SENATOR FULLER CLARK: I think what Sen. Clark said is if that sign advertises that business, it's not affected. If the sign is advertising "Lou D'Allesandro for Senate," it is affected.

SENATOR BARNES: Well, it should be. I mean, sorry. (Laughter)

SENATOR GATSAS: So, and I'm not – I apologize, Senator, but I remember one of your signs. So it does affect the businesses on Elm Street. "Pappy's Pizza" puts other things other than its establishment on that sign.

SENATOR BARNES: Such as "Please Support Pop Warner Football this Sunday."

SENATOR GATSAS: Absolutely.

SENATOR BARNES: Okay. I understand. Thank you.

(The Chair recognized Sen. Clegg to speak.)

SENATOR CLEGG: Thank you, Madam President. With all due respect to my colleague, this bill doesn't do any of those things. You're still allowed to have the same signs you have now, you're still allowed to use them the same way you do now. The purpose of this bill is to make sure that when you're on the highway or the turnpike, where the average speed is 80 miles an hour, there's not some sign on a billboard distracting you, flashing something that maybe you want to see, maybe you don't. Maybe it's the "Schlitz Girls' Ski Team" or something, you know. I don't know, Jack. It's pretty old. There's no intent to stop anybody from doing anything. Currently, the Department of Transportation has the right to go down Elm Street in Manchester, because it's a state highway, and decide that Brady Sullivan's sign is too bright or too dazzling and it's affecting drivers, and they can give 'em a choice: either tone it down or shut it off. But they can't tell 'em to take it out. And this bill

doesn't give 'em any right to take it out. It just says that we have the right to make sure that they don't change those signs on the turnpikes and highways that haven't already been permitted. If you got a permit, we can't do anything in the Legislature that's retroactive. You got it, you get to keep it. So I'm not as worried about it because I know that the intent of the Committee, and I'm going to assume the intent of this chamber, is to make sure that when you're going down the turnpike there isn't something flashing at you as you pass that guy doing 80 because you're doing 85, that suddenly flashes something and you want to turn to look. We got all these different reasons why we don't want people on cell phones, we don't want them text-messaging; we're just sending a message that the stationary signs are good, leave it at that. Thank you, Madam President.

(The Chair recognized Sen. Gatsas for a question of Sen. Clegg.)

SENATOR GATSAS: Sen. Clegg, I'm reading on line three, and it says, "except as provided in paragraph (b)" And paragraph (b) says that sign can only talk about "time, date, temperature, weather or other similar information."

SENATOR CLEGG: Right.

SENATOR GATSAS: Well, if the sign says "Welcome North Little League," that's not time, temperature, date.

SENATOR CLEGG: Senator, if you put a sign on the highway where people are doing 80 miles an hour that said "Go Pop Warner Football," it shouldn't be there. The only thing we want on those highways and those turnpikes are signs that say, "Accident Ahead," "Construction Ahead," that type of thing. This has nothing to do with the signs that are already permitted, used on businesses, in other locations. The intent is the highways as we know them, and the turnpikes as we know them.

SENATOR GATSAS: Follow-up. Senator, with all due respect, this says "federal highway." And Elm Street is a federal highway. It doesn't exempt it.

SENATOR CLEGG: Well, then perhaps when this goes to the House, we ought to make sure that Manchester's main street is exempted as one federal highway in the State of New Hampshire that really isn't. But I think we should change that designation anyways, because if it's a federal highway, chances are you're getting federal money to plow those streets, and I don't think that's fair. That's sort of like an earmark, isn't it? (Laughter)

SENATOR GATSAS: Senator, with all due respect, the highway budget isn't 450,000 in the red because somebody else is plowing that street.

Sen. Gottesman moved the question.

Without objection, the Chair moved to close debate with several speakers remaining.

(The Chair recognized Sen. D'Allesandro for a question of Sen. Fuller Clark.)

SENATOR D'ALLESANDRO: When I spoke to you about this bill and asked you specifically about – the question that Sen. Gatsas posed, about signs in Manchester, our existing signs, and we have many of these signs, I thought the answer that you gave me was this did not apply to Manchester.

SENATOR FULLER CLARK: It does not apply to existing signs in Manchester. I was unaware that Elm Street is a state road. So that anyone who wished to put up a digital flashing, intermittent sign would now not be able to do that on the main street of Manchester. I think that is a good policy. Because even people going up and down those streets are going to be distracted by the moving signs when you have pedestrians, you have a lot of other issues that are going along. So I did not mean to mislead you, Sen. D'Allesandro. It's my understanding that most municipalities have the power to control their own signage. I was unaware that Elm Street was a state road.

SENATOR D'ALLESANDRO: Further question. We have businesses on that street that depend on those motion signs. For example, the Verizon Center. Now, would this eliminate the Verizon Center from advertising?

SENATOR FULLER CLARK: No. They already have those signs. This is for new signs.

SENATOR D'ALLESANDRO: Okay. So if they wanted to – further question.

SENATOR FULLER CLARK: Or the conversion of existing signs.

SENATOR D'ALLESANDRO: So if they did want to convert and put another sign –

SENATOR FULLER CLARK: And that's on site.

SENATOR D'ALLESANDRO: Okay.

(The Chair recognized Sen. Gallus for a question of Sen. Clegg.)

SENATOR GALLUS: I'm just curious. If I recall correctly, you were saying something about signage on the turnpikes and flashing, you know, messages. Isn't there some type of federal regulation with a Ladybird Johnson Act where we've eliminated most of that stuff along those type of highways?

SENATOR CLEGG: Well, yeah, you eliminated the issuance of any new permits for billboards. But what they're trying to do, and the reason why Sen. Fuller Clark is trying to keep line (c) in is because they want to make sure that they don't have the ability to change those existing billboards into diodes or light-emitting – “flashing and dazzling” signs, I guess is what I want to say.

SENATOR GALLUS: Follow-up? But more likely than not, this would affect, you know, signage in cities and towns across the state, rather than the state highways. I don't run across – I'm up and down the turnpike all the time.

SENATOR CLEGG: Signs in cities and towns that can be seen from the highway are already regulated by DOT. This is just a section of that law. So when you go by, when you drive down the highway and you go by the Mall of New Hampshire in Manchester, those flashing signs that you can see from the highway are already under the control of the Department of Transportation. They can go over there, they can tell them they either have to shut 'em off, turn 'em down, whatever, if they find – even though they're well off the highway, if they find them offensive or dangerous to the people. So we haven't changed that. But on your city streets or inside, DOT's not going to create a problem, and that's what they testified to.

SENATOR GALLUS: Thank you, Senator.

(The Chair recognized Sen. Downing for a question of Sen. Fuller Clark.)

SENATOR DOWNING: Just a point of clarification. In my community of Salem we have Route 38, we have Route 97, which is Main Street; Route 28, Route 111 and Route 93. Currently, our planning board and zoning board regulate the signs, and they make it very difficult to put those signs out, but we still have some of them out there. Is this going to prohibit anybody from putting a sign out?

SENATOR FULLER CLARK: If those are regulated by your local community, no. This only applies to signs that are regulated by the State, and it is an attempt to address an emerging technology for advertising that is becoming all too pervasive, is dangerous and distracting.

SENATOR DOWNING: Thank you.

(The Chair recognized Sen. Letourneau to ask a question of Sen. Clegg.)

SENATOR LETOURNEAU: Thank you very much. Well, I just wanted to clear things up, 'cause we had a lot of discussion in Committee about this, Sen. Clegg, and didn't the Manchester – Mall of New Hampshire come up for a long conversation?

SENATOR CLEGG: Well, that's the example I just explained.

SENATOR LETOURNEAU: Right.

SENATOR CLEGG: Correct.

SENATOR LETOURNEAU: And didn't the Department of Transportation clearly identify that that was okay, as you just said?

SENATOR CLEGG: They okayed – they said the sign was okay, but they did tell us they had jurisdiction even though it was off the highway, because it could be seen by the highway, and that's under existing law.

SENATOR LETOURNEAU: Thank you.

(The Chair recognized Sen. Reynolds for a question of Sen. Fuller Clark.)

SENATOR REYNOLDS: I apologize for just trying to clarify this, Sen. Clark, but your bill does not apply retrospectively, does it?

SENATOR FULLER CLARK: No.

SENATOR REYNOLDS: And would you believe that if it doesn't explicitly say that, most New Hampshire Supreme Court rulings would say that it does not apply retrospectively; would you agree with that?

SENATOR FULLER CLARK: Yes.

SENATOR REYNOLDS: Thank you.

The question is on the motion of Ought to Pass on SB 341.

A roll call was requested by Sen. Gatsas, seconded by Sen. Barnes.

The following Senators voted Yes: Reynolds, Sgambati, Burling, Cilley, Janeway, Odell, Kelly, Bragdon, Gottesman, Foster, Clegg, Larsen, Barnes, Letourneau, Estabrook, Downing, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Kenney, Roberge, Gatsas, DeVries, D'Allesandro.

Yeas: 18 - Nays: 6

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 358, relative to mooring permits. Transportation and Interstate Cooperation Committee. Ought to Pass, Vote 5-0. Senator Letourneau for the committee.

SENATOR LETOURNEAU: Thank you, Madam President. I move Senate Bill 358 ought to pass. This legislation authorizes the Commissioner of the Department of Safety to adopt rules requiring mooring permits on public waters. This process is currently available for six lakes in our state. Senate Bill 358 would expand the process to create a process whereby individuals in local towns surrounding a body of water could petition the Department of Safety to hold a public hearing to evaluate the need for mooring regulation. The Senate Transportation Committee agrees with this, and it's a good step forward, and asks that the Senate support the ought-to-pass motion on Senate Bill 358. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on SB 358.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 380, relative to petitions for boating rules. Transportation and Interstate Cooperation Committee. Ought to Pass with Amendment, Vote 5-0. Senator Burling for the committee.

Transportation and Interstate Cooperation

March 12, 2008

2008-0990s

03/10

Amendment to SB 380

Amend the bill by replacing sections 1-2 with the following:

1 Operating Restrictions; Petitions. Amend RSA 270:12, I to read as follows:

I. The commissioner of safety shall, after receiving a petition signed by ~~[25 or more residents or property owners of each affected town or towns in which a]~~ **200 persons who are either owners of shorefront property on the lake, pond, or river or citizens of a town bordering the lake, pond, or river [is located], at least 50 of whom are not owners of shorefront property,** and after notice and hearing, at which it appears that the public interest requires, adopt rules under RSA 541-A governing the maximum horsepower of boat engines and outboard motors or prescribe maximum speed limits for the operation of such boats or outboard motors applicable to or upon all or any portion of the public waters of this state. The commissioner of safety shall, in like manner and after notice and hearing, prohibit the use of motorboats and outboard motors on bodies of public water having an area of 35 acres or less; provided, that said prohibition shall not be construed as affecting the bodies of water covered by RSA 270:75~~[-109]~~ **through RSA 270:132.** Hearings under this section shall be held in the vicinity of the body of water under consideration during the months of June, July, August, and September following the date of the petition.

2 Ski Craft; Petitions. Amend RSA 270:74-a, II to read as follows:

II. Any group of ~~[10 or more residents or property owners of]~~ **voters in a town in which a lake, pond, or river is located** may petition the commissioner to prohibit or restrict the use of ski craft on the lake, pond, or river, or a portion thereof. **Such petition shall be by 200 persons who are either owners of shorefront property on the lake, pond, or river or citizens of a town bordering the lake, pond, or river, at least 50 of whom are not owners of shorefront property.** Once ski craft have been prohibited or restricted on a lake, pond, or river,

or portion thereof, pursuant to this section for at least one year such a group of ~~[residents or property owners]~~ **voters** may not petition to allow the use of ski craft on the lake, pond, or river, or a portion thereof.

2008-0990s

AMENDED ANALYSIS

This bill requires petitions signed by 200 shorefront property owners or citizens in a town bordering a lake, pond, or river to request department of safety rules restricting the operation of boats or ski craft on a lake, pond, or river.

SENATOR BURLING: Thank you, Madam President. Madam President, I move Senate Bill 380 ought to pass with amendment. The legislation as filed required petitions to be signed by ten percent of the registered voters in the town or towns in which a lake, pond or river is located, to request the Department of Safety rules restricting the operation of boats or ski craft. The Committee attempted a compromise which would have reduced that number to a fixed 200 persons, at least 50 of whom are not owners of shorefront property. The Committee recommends that Senate Bill 380 be adopted as amended, and asks your support. Thank you.

MOTION TO TABLE

Sen. Foster moved to have SB 380 laid on the table.

Motion adopted.

Sen. Letourneau is in opposition to the motion to table SB 380.

LAIID ON THE TABLE

SB 380, relative to petitions for boating rules.

SB 388, relative to commercial driver license qualifications. Transportation and Interstate Cooperation Committee. Inexpedient to Legislate, Vote 4-1. Senator Burling for the committee.

SENATOR BURLING: Well, I've lost my notes, but I move Senate Bill 388 inexpedient to legislate. This bill would have imposed a variety of requirements on commercial driver's license. The Committee, of course, remembered that driver's licenses – commercial driver's licenses have been almost totally taken over by the federal government, it's a federal issue. So whatever we might wish to say wouldn't amount, really, to a hill of beans. So the Committee recommends inexpedient to legislate.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on SB 388.

Motion of Inexpedient to Legislate adopted.

SB 429, relative to driver education courses in other states. Transportation and Interstate Cooperation Committee. Ought to Pass with Amendment, Vote 5-0. Senator Kelly for the committee.

Transportation and Interstate Cooperation

March 12, 2008

2008-0995s

03/10

Amendment to SB 429

Amend the bill by replacing section 1 with the following:

1 Driver Education; Reciprocity. Amend RSA 263:20 to read as follows:
263:20 Driver Education; Reciprocity. The provisions of RSA 263:19 shall not prevent the issuance of a driver's license to any individual who

can produce satisfactory evidence of completion of an equivalent course of driver education, approved by the issuing state, provided that the ~~commissioners of safety and education acting jointly shall determine that such course is equivalent to New Hampshire's driver education course and provided that such course meets or exceeds~~ ***driver training curriculum is equal to or more stringent than New Hampshire's and that the number of hours of classroom, behind-the-wheel, and observation instruction provided to the student is equal to or greater than*** the state's minimum standards.

2008-0995s

AMENDED ANALYSIS

This bill eliminates the requirement that the commissioners of safety and education determine that a driver education course in another state is equivalent to a New Hampshire course in order for persons taking the course to be issued New Hampshire licenses.

SENATOR KELLY: Thank you, Madam President. I move SB 429 ought to pass with amendment. Senate Bill 429 deals with driver's training and is an important issue to many of us who have schools along border towns. While the legislation as introduced sought to remove the Commissioner of Education from having any input into whether the out-of-state driver's training met New Hampshire standards, the committee amendment is clear. As amended, the legislation requires that the individual produce satisfactory evidence that the driver training curriculum from out of state is equal to, or more stringent than, New Hampshire's, and that the number of hours of classroom, behind the wheel, and observation instruction is equal to, or greater than, our minimum standard. The Transportation Committee recommends that SB 429 be adopted as amended and asks for your support.

**The question is on the adoption of Committee Amendment 0995s.
Committee Amendment 0995s adopted.**

(The Chair recognized Sen. Kenney to speak.)

SENATOR KENNEY: Thank you, Madam President. I just wanted to thank the Transportation Committee for working so diligently on this bill. As many people know, I have several families in the community of Chatham. And you know, to get to Chatham you got to go through Maine; to get to Chatham, it's a presidential trivia question. But we have a lot of students and parents, or the kids go to Fryeburg Academy where they have a driver's ed. course, and for the last several years they've been not able to get their New Hampshire licenses because New Hampshire has not recognized the driver's ed. program. So I just want to, again, thank the Committee for helping these families out and to deal with their hardships. And I think it's a good piece of legislation, and I hope that the House passes it. Thank you.

The question is on the adoption of Ought to Pass as Amended on SB 429.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 476, relative to operation of OHRVs on state highways in Coos county. Transportation and Interstate Cooperation Committee. Inexpedient to Legislate, Vote 3-2. Senator Burling for the committee.

SENATOR BURLING: Thank you, Madam President. I move Senate Bill 476 inexpedient to legislate. Senate Bill 476 is an act relative to the operation of Off-Road Recreational Vehicles on state highways in Coos County. It was introduced in order to build tourism and hopefully assist the struggling North Country economy. While the Committee is deeply sympathetic with the real needs of Coos County and the desire to implement statutes which will make Jericho Park more attractive, we also have very real concerns about public safety. Some felt that loosing 4x4's and Off-Road Recreational Vehicles of the sort into the traffic with timber trucks was not a good idea. A definite plan for implementation and enforcement by the Department of Safety and Transportation and local government officials was not forthcoming. Therefore, the Transportation Committee asks that Senate Bill 476 be found inexpedient to legislate.

(The Chair recognized Sen. Gallus to speak.)

SENATOR GALLUS: Thank you, Madam President. I know it's a late hour, so I'll be very quick. This particular bill, they're doing the same type of thing in Canada already. We requested that you could ride on the sides of the shoulders in Coos County, which is pretty much already being done, and we were trying to legalize it. And I assure you it will continue to be done in the North Country. And I thank you.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on SB 476.

Motion of Inexpedient to Legislate adopted.

SB 535, relative to exceptions to highway surveillance prohibitions. Transportation and Interstate Cooperation Committee. Inexpedient to Legislate, Vote 4-1. Senator Letourneau for the committee.

SENATOR LETOURNEAU: Thank you, Madam President. I move Senate Bill 535 inexpedient to legislate. Senate Bill 535 was filed in order to allow the City of Manchester to utilize technology to assist their enforcement officers in ticketing illegally parked cars. The Committee had concerns that this legislation would open the door to moving surveillance where police vehicles could be driving down the road, reading vehicles that are parked or passing by. The Committee also had concerns that this allows one to be checked against data base to see whether someone is a criminal. While the Committee is extremely sympathetic to Manchester's 1.3 million in outstanding parking tickets, we do not feel this is an appropriate fix to the problem. Therefore, the Transportation Committee asks that Senate Bill 535 be found inexpedient to legislate, and asks for your support. Thank you.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on SB 535.

Motion of Inexpedient to Legislate adopted.

Recess/Out of Recess.

Sen. Hassan presiding.

SB 396, relative to the establishment of a statewide transportation policy. Transportation and Interstate Cooperation Committee. Ought to Pass with Amendment, Vote 3-1. Senator Kelly for the committee.

Transportation and Interstate Cooperation
March 18, 2008
2008-1056s
06/09

Amendment to SB 396

Amend the bill by replacing all after the enacting clause with the following:

1 New Chapter; Statewide Transportation Policy. Amend RSA by inserting after chapter 240 the following new chapter:

CHAPTER 241

STATEWIDE TRANSPORTATION POLICY

241:1 Findings and Public Purpose. The general court finds that:

I. It is essential to the well-being of New Hampshire's citizens and to the economic health of the state that New Hampshire have and maintain a sustainable, balanced, and effective transportation system that is capable of efficiently transporting people and goods, and that is well-integrated with the regional transportation system spanning New England.

II. The cost of maintaining New Hampshire's transportation system and infrastructure has increased substantially, greatly outpacing the state's transportation funding resources. The widening gap between transportation costs and available revenues impedes the ability of the state to meet the urgent need to maintain and repair existing infrastructure, including bridges and roads. Under these circumstances, it is essential that New Hampshire plan and develop a balanced transportation system that is sustainable for the long-term and that represents a wise investment of public funds.

241:2 Statewide Transportation Policy. The statewide transportation policy for all future projects shall be as follows:

I. To maximize the value of its limited transportation funds, New Hampshire must invest in a transportation system that:

- (a) Is integrated with the land use goals and policies of the state;
- (b) Is balanced, including multiple means of travel;
- (c) Meets the diverse needs of the citizens of the state, including rural, urban and low-income populations, the growing elderly population, and people with disabilities;
- (d) Minimizes the effects of unforeseeable natural or economic conditions that could otherwise cripple a predominantly single-mode transportation system.

II. To spend its limited transportation funds wisely, the state must ensure that its transportation investments protect New Hampshire's quality of life by strengthening communities and the economy, protecting the natural environment, advancing the state's comprehensive development plan and smart growth policy, and reducing the greenhouse gases.

III. Relative to the planning, funding, and development of New Hampshire's transportation system, the department of transportation shall consider and advance proposals that, taken in the aggregate:

- (a) Ensure the repair and maintenance of roads, bridges, rail, and other transportation infrastructure throughout the state to provide a safe, efficient, intermodal transportation network.
- (b) Are integrated with and support an effective and balanced regional transportation system that strengthens New Hampshire's economic position within the New England region.

(c) Support the goal of achieving a balanced transportation system, including multiple transportation options, that serves the diverse needs of rural, urban, low-income, and elderly populations, and that is adaptable and resilient to meet New Hampshire's future needs.

(d) Consider the full range of reasonable transportation alternatives for all significant highway projects and all projects of substantial public interest, and prioritize the following alternatives before increasing highway capacity:

(1) Transportation system management.

(2) Transportation demand management.

(3) Public transit, including but not limited to buses and trains.

(e) Require corridor studies from which significant highway projects and projects of substantial public interest are developed to encourage integration and coordination of such projects with local and regional land use planning that is consistent with RSA 9-B, and to ensure the coordination of local land use plans that preserve the capacity of the transportation infrastructure at issue and maximize the value of transportation investments.

(f) Increase the energy efficiency of the transportation system.

(g) Reduce the global warming effects of the transportation sector and minimize the impacts of transportation on public health, air and water quality, open spaces, and other natural resources.

(h) Achieve effective intermodal connections with the state's major airports to enhance access for the citizens of the state, and to better integrate the state's major airports within the region's transportation system to enhance access to and from major population centers in New England.

(i) Promote context-sensitive solutions that are consistent with the unique character of communities.

(j) Coordinate with and advance the comprehensive state development plan, under RSA 9-A.

(k) Are consistent with and advance the state's smart growth policy as established in RSA 9-B.

(l) Incorporate a public participation process in which municipalities, regional planning commissions, metropolitan planning organizations, and the public have timely notice and opportunity to identify and comment on concerns related to transportation planning decisions, capital investment decisions, and project decisions. The department shall take the comments and concerns of local citizens into account and shall be responsive to them.

241:3 Compliance with Statewide Transportation Policy. Capital investment decisions, transportation planning decisions, and project decisions of the department of transportation shall comply with the statewide transportation policy under this chapter. Appeals from such decisions may be taken in accordance with RSA 541:6. The department of transportation shall report on its decision-making processes at least semi-annually by filing a written review thereof with the president of the senate, the speaker of the house of representatives, and the chairpersons of the senate transportation and interstate cooperation and capital budget committees and the house transportation and public works and highways committees.

2 Effective Date. This act shall take effect 60 days after its passage.

SENATOR KELLY: Thank you, Madam President. I move SB 396 ought to pass with amendment. Senate Bill 396 addresses the major challenges in maintaining and developing a sustainable transportation system for our state, a system that will efficiently move people and goods while securing and strengthening our economic position within the region as well as

providing for a wise investment of our funding dollars. The provisions of Senate Bill 396 establish a balanced approach, which will provide for multiple means of travel, integrating local land use policies, preserving our precious environment and quality of life. The current economic picture provides us with both the reason and necessity to look at the way we have historically viewed transportation planning. Senate Bill 396 as amended will allow the Legislature to play a leading role in developing policy and solutions for our state's transportation system, and will guide the way our transportation dollars are spent now and in the future. This bill provides necessary policy and direction for our state agencies. The committee amendment clarifies language within the bill as well as stipulating what type of planning should be taking place, and provides for a semi-annual report from our Department of Transportation to both the Senate and House Transportation Committees. The Senate Transportation Committee recommends that SB 396 be adopted as amended, and asks for your support. Thank you.

(The Chair recognized Sen. Barnes for a question of Sen. Kelly.)

SENATOR BARNES: Sen. Kelly, is this a piece of legislation that has something to do with the Conservation Law Foundation?

SENATOR KELLY: That has, that – I'm sorry.

SENATOR BARNES: Does this bill have something to do with the Conservation Law Foundation that is holding up Route 93?

SENATOR KELLY: Yeah, I'm not sure what you mean by "has something to do with." We've had some –

SENATOR HASSAN (Presiding): Follow-up question.

SENATOR BARNES: Thank you. Did they propose this? Are they the ones that brought this forward to you?

SENATOR KELLY: They have been giving their opinion and advice and information on this bill.

SENATOR BARNES: Thank you very much.

The question is on the adoption of Committee Amendment 1056s.

A roll call was requested by Sen. Barnes.

Sen. Barnes withdrew his request for a roll call.

The question is on the adoption of Committee Amendment 1056s.

Committee Amendment 1056s adopted.

(The Chair recognized Sen. Kenney to speak.)

SENATOR KENNEY: I'd just like to speak to it. And I'm sure if I'm in favor of this, but there's some elements to it, I'm, you know, definitely opposed. I think it's good that we have a statewide transportation policy, but I think there's some elements that have been left out. One of them is, is that we get a lot of the federal funding that we get in the programs that come from the federal level are not really addressed in this legislation. For instance, we have something called "SAFETEA-LU" which is something that the federal government passed a couple of years back, which was the Safe, Accountable, Flexible, Efficient Transportation Equity Act. And the previous reauthorization of federal highway plan was called "ISTEA." And each of those reauthorization bills at the federal level have a theme to them. This last federal highway bill that was passed really focused in on safety, and whether it be off-ramps or whether it be certain ways

that roads were designed. And prior to that it was ISTEA, which really spoke to the Intermodal System. So what I'm concerned about this piece of legislation is that it really doesn't talk about the federal aspect and where we get most, a good majority of our money, and it doesn't talk about how we're going to connect what the federal government gives us and what they're focused in on, and how we're going to develop our statewide transportation policy. And lastly I would say that I didn't see anywhere in this bill that it spoke to the GACIT Process, which is an instrumental process that starts from the grassroots level to the regional planning commissions to the state level, and it discusses transportation projects and it talks about how we're going to prioritize our projects over a ten-year period. So those are two flaws that I saw in the bill, just reading it over, and I would hope, if this does pass, that maybe if it gets to the House that they'll address more of the federal funding and the reauthorization of the federal highway bill in 2009. Thank you, Madam President.

(The Chair recognized Sen. Burling to speak.)

SENATOR BURLING: Thank you, Madam President. I'd just like to say that I think my colleague has identified two of the greatest strengths of this bill. This is our first effort not to tell ourselves what it is the federal government wants us to do, but to tell us what we're going to do about transportation policy. This is an assertion of dominance over the transportation issue. It is, if you read it, one of the clearest statements of our taking responsibility for policy that I've read in my 20 years in here. It's backed by people who have spent years trying to figure out the issues of transportation policy. Michael Walls from DES, Lew Feldstein from the New Hampshire Charitable Fund. We heard the testimony of all those folks who did that incredible transportation study for us over the course of the last three years; thousands of hours of citizens' time was invested in trying to figure out how we could best influence our transportation future so that things go well for the State. Nancy Johnson from the New Hampshire Planners, Maura Carroll from the Government Center; Jeff Brillhart from DOT: all testified in favor of this. And with Betsy DeVries' help, we tried to make the bill clearer, to take out parts that we thought were not critical, and to get focused on the essential message which is this Legislature has responsibility for designing and maintaining and ensuring that we have a coordinated and useful transportation system, and I hope we'll pass this. This is a good piece of work.

Sen. Gottesman moved the question.

Without objection, the Chair moved to close debate with one speaker remaining.

(The Chair recognized Sen. Fuller Clark to speak.)

SENATOR FULLER CLARK: Thank you very much. I would just like to draw Sen. Kenney's attention to the subsequent bill, which is Senate Bill 452, which does talk about the actual process in terms of implementing and coordinating transportation plans from the local level, the regional level, and the state level, and it includes the Governor's Advisory Commission on Intermodal Transportation.

The question is on the adoption of Ought to Pass as Amended on SB 396.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

Sen. Letourneau is in opposition to SB 396.

SB 452, relative to transportation planning. Transportation and Interstate Cooperation Committee. Ought to Pass with Amendment, Vote 3-2. Senator Burling for the committee.

Transportation and Interstate Cooperation

March 18, 2008

2008-1060s

03/01

Amendment to SB 452

Amend the bill by replacing all after the enacting clause with the following:

1 Comprehensive Plan; Transportation. Amend RSA 9-A:1, III(b)(3) to read as follows:

(3) A transportation section which considers all pertinent modes of transportation and provides a framework of policies and actions which will provide for a safe, [and] adequate, **and sustainable** transportation system ***that is coordinated with, supports, and is supported by land use planning at the local, regional, and state levels*** to serve the needs of the state ***and its citizens, and which advances other elements of the comprehensive state development plan.***

2 Comprehensive Plan; Land Use. Amend RSA 9-A:1, III(b)(7) to read as follows:

(7) A natural resources section which identifies trends in land protection, open space, **and** farm land preservation and protection, and proposes policies and actions necessary at the state level, ***including but not limited to policies and actions that integrate land use and transportation planning***, to protect those resources which are perceived to be of statewide significance.

3 Comprehensive Plan; State Departments. Amend RSA 9-A:1, IV to read as follows:

IV. The comprehensive development plan shall serve as the basis for policy and program development **and implementation** by the various departments of state government. State agencies shall develop and regional planning commissions and local planning boards are encouraged to develop plans which are consistent with the policies and priorities established in the comprehensive development plan.

4 Office of Energy and Planning; Coordination. Amend RSA 9-A:2, III to read as follows:

III. Coordinate and monitor the planning efforts of various state agencies and departments, ***including but not limited to agencies involved in the planning and development of transportation infrastructure***, to ensure that program plans published by such agencies are consistent with the policies and priorities established in the comprehensive development plan.

5 Comprehensive Regional Development Plan. Amend RSA 36:47, III to read as follows:

III. In preparing a comprehensive plan for the development of the region within its jurisdiction, each regional planning commission may use the framework for the state's comprehensive development plan in RSA 9-A:1, III as the basis for its plan. Such plan shall be updated every 5 years, or sooner if desired by the regional planning commission, ***and each such plan shall include a transportation section which addresses the transportation needs of the region in a manner that is integrated with, supports, and is supported by the land use planning objectives of the region and the comprehensive state development plan.*** Prior to its adoption, the plan shall be distributed

to every library, planning board, and board of selectmen/aldermen/city council in each of the communities within the region, and to the office of energy and planning. The regional planning commission shall address in writing all comments received prior to the publication of a final draft. A public hearing shall be held by the regional planning commission with 30 days' notice published in all newspapers of general circulation in the region, and shall state where the document can be viewed[;] **and** the time and place of the public hearing, and shall allow for written comments. For each regional plan, the office of energy and planning shall offer comments as to its consistency with the state plan. The first regional development plans affected by this statute shall be adopted within 5 years of the effective date of this paragraph [~~and renewed at least every 5 years thereafter~~].

6 Relationship to Local Planning Boards. Amend RSA 36:50 to read as follows:

36:50 Relationship To Local Planning Boards. A regional planning commission may assist the planning board of any municipality within the delineated region to carry out any regional plan or plans developed by said commission. A regional planning commission may also render assistance on local planning problems. A regional planning commission may make recommendations on the basis of its plans and studies to any planning board, to the legislative body of any city and to the selectmen of any town within its region, to the county commissioners of the county or counties in which said region is located, and to any state or federal authorities. Upon completion of a comprehensive master plan for the region or any portion of said comprehensive master plan, a regional planning commission [~~may~~] **shall** file certified copies of said comprehensive master plan or portion thereof with the planning board of any member municipality. Such planning boards may adopt all or any part of such comprehensive master plan which pertains to the areas within its jurisdiction as its own master plan, subject to the requirements of RSA 674:1[~~-4~~] **through RSA 674:4.**

7 Additional Powers and Duties of Regional Planning Commissions. Amend RSA 36:53 to read as follows:

36:53 Additional Powers and Duties of Regional Planning Commissions. In order to implement any of the provisions of a regional plan, which has been adopted or is in preparation, a regional planning commission may, in addition to its powers and duties under RSA 36:47, undertake studies and make specific recommendations on economic, industrial, and commercial development within the region. [~~and~~] ***Such studies and recommendations shall address the manner in which economic, industrial, and commercial development within the region affect, may best be served by, and may best preserve the capacity of transportation systems within the region. A regional planning commission may*** carry out, with the cooperation of municipalities and/or counties within the region, economic development programs for the full development, improvement, protection, and preservation of the region's physical and human resources. ***Such programs shall be implemented to further the transportation and land use objectives of the comprehensive state development plan and the regional planning commission.***

8 Statewide Transportation Improvement Program. Amend RSA 228:99 to read as follows:

228:99 Statewide Transportation Improvement Program (STIP). The governor shall develop a statewide transportation improvement program

(**STIP**) as required by 23 U.S.C. sections 134 and 135, as amended. The governor shall revise and update the program every 2 years. Adoption of the STIP and revised STIP shall be as follows:

I. Each metropolitan planning organization and rural regional planning commission shall reach agreement with the department of transportation relative to funding unified planning work programs consistent with 23 U.S.C. sections 134 and 135 no later than December 1 of each even-numbered year. Each metropolitan planning organization and rural regional planning commission shall provide a regional transportation improvement program (TIP) to the department of transportation no later than April 1 of each odd-numbered year. Such plans shall include a public involvement plan and education initiative to ensure early and adequate input from residents, municipalities, and any other interested parties in New Hampshire *relative to the TIP and its consistency with local and regional land use plans and the comprehensive state development plan. Each metropolitan planning organization and regional planning commission shall, in its TIP, describe how the TIP is coordinated with and furthers local and regional land use planning objectives and is consistent with the comprehensive state development plan.*

II. *The department, upon receipt of the TIPs, shall determine whether the TIPs are consistent with the comprehensive state development plan and shall identify in the tentative STIP aspects of any TIPs that are not consistent.* The commissioner shall submit the tentative STIP, *with the department's analysis of its consistency with the comprehensive state development plan*, in accordance with the state planning process as required in 23 U.S.C. section 135 to the governor's advisory commission on intermodal transportation no later than July 1 of each odd-numbered year.

III. The governor's advisory commission on intermodal transportation shall conduct at least one public hearing in each executive council district to present the tentative STIP to the public and to receive the public's comments and recommendations regarding the program. The governor's advisory commission on intermodal transportation shall submit such program along with the commission's recommendations to the governor no later than December 1 of each odd-numbered year. Each metropolitan planning organization and rural regional planning commission ~~should~~ **shall** conduct an informational meeting after the commission submits its recommendations to receive the public's final comments and recommendations regarding the proposed programs before adoption by the governor. *Each metropolitan planning organization and regional planning commission shall, during such informational meeting, discuss the manner in which the proposed program furthers and is coordinated with the land use planning objectives of the region and the municipalities located therein and the comprehensive state development plan.*

IV. *Before adopting the STIP, the governor, with the assistance of the department of transportation and the office of energy and planning, shall issue a report on the consistency of the STIP with the comprehensive state development plan and shall amend the STIP as necessary to achieve such consistency.* The governor shall submit the **report and the STIP** to the general court to be acted on no later than January 15 of each even-numbered year. After an enactment by the general court of the STIP or by June 1 of each even-numbered year, whichever is earlier, each metropolitan planning organization and rural regional planning commission should continue its public involve-

ment program by conducting at least one informational meeting concerning the STIP. ***Such meetings shall address how programs within the STIP will be coordinated with local land use planning within the region and the municipalities located therein.***

9 Project Priority. Amend RSA 240:2 to read as follows:

240:2 Project Priority. To the extent practicable, ***and subject to the requirements of RSA 228:99 relative to the consistency of the statewide transportation improvement program with the comprehensive state development plan and regional and local land use planning,*** the projects shall be implemented in the order shown in the report.

10 New Section; Procedural Requirements for the State 10-Year Transportation Improvement Plan. Amend RSA 240 by inserting after section 3 the following new section:

240:4 Procedural Requirements. The department of transportation shall be subject to the following procedures regarding the state 10-year transportation improvement plan:

I. Funding for projects shall be prioritized based on a project's level of readiness to improve the rate at which projects in the 10-year plan are completed.

II. Projects that are fiscally constrained for 4 years and can be readily completed shall be on a separate list titled the statewide transportation improvement plan (STIP). The STIP shall be prioritized by level of readiness.

III. The 10-year plan shall be divided into 3 separate lists: large projects, small projects, and maintenance and repair.

IV. The 10-year plan shall be divided into categories by funding source or function.

V. At least one hearing shall be held by the governor's advisory commission on intermodal transportation (GACIT) for every regional planning commission. Hearings shall be held beginning in July of the first fiscal year of the biennium.

VI. The general court shall receive the 10-year plan by January 15.

VII. Every 2 years, the department of transportation shall propose to the general court a list of projects to be removed from the 10-year plan because they:

(a) Have significantly changed in scope.

(b) Are no longer feasible.

(c) Lack the necessary permits and are unlikely to receive the necessary permits in the foreseeable future.

(d) Are inconsistent with the comprehensive state development plan or regional and local land use planning.

(e) For other reasons are unnecessary or unlikely to proceed.

VIII. Inflation shall be included in both the costs calculated in the 10-year plan and shall also be included in calculating the necessary revenues.

11 Master Plan; Transportation. Amend RSA 674:2, III(a) to read as follows:

(a) A transportation section which considers all pertinent modes of transportation and provides a framework for both adequate local needs and for coordination with regional and state transportation plans ***and local land use planning objectives.*** Suggested items to be considered may include but are not limited to public transportation, park and ride facilities, and bicycle routes, or paths, or both. ***The transportation section should address the manner in which transportation and local land use planning may:***

(1) Preserve the capacity of local roads and state highways by reducing and managing traffic demand.

(2) Make transportation and land uses mutually supportive of one another.

(3) Achieve the principals of smart growth described in RSA 9-B, sound planning, and wise resource protection.

12 Master Plan Preparation. Amend RSA 674:3, I to read as follows:

I. In preparing, revising, or amending the master plan, the planning board may make surveys and studies, and may review data about the existing conditions, probable growth demands, and best design methods to prevent sprawl growth in the community and the region. The board **should consider the goals, policies, and guidelines of the comprehensive state development plan and the comprehensive master plan developed by the pertinent regional planning commission** and may also consider the goals, policies, and guidelines of any other regional or state plans, as well as those of abutting communities.

13 Purposes of Zoning Ordinances. Amend RSA 674:17, I(a) to read as follows:

(a) To lessen congestion in the streets **and coordinate transportation and land use planning;**

14 Purposes of Zoning Ordinances. Amend RSA 674:17, II to read as follows:

II. Every zoning ordinance shall be made with reasonable consideration to, among other things, the character of the area involved and its peculiar suitability for particular uses, as well as with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the municipality, **and coordinating transportation and land use planning to preserve the capacity of highways and roads.**

15 New Subparagraphs; Innovative Land Use Controls. Amend RSA 674:21, I by inserting after subparagraph (n) the following new subparagraphs:

(o) Transportation demand management.

(p) Transit-oriented development.

16 New Subparagraph; Innovative Land Use Controls. Amend RSA 674:21, IV by inserting after subparagraph (b) the following new subparagraph:

(c) "Transportation demand management" means regulations that require, or provide incentives for, land use activities that generate substantial traffic to include measures that help preserve the traffic capacity of existing road and highway infrastructure.

17 Effective Date. This act shall take effect January 1, 2009.

SENATOR BURLING: Thank you, Madam President. I move Senate Bill 452 ought to pass with amendment. This bill integrates local, regional and statewide planning efforts. It is an important piece of legislation because it returns to the Legislature the power over transportation planning in a detailed way. The people's Legislature should be making long-term transportation planning decisions. And I would footnote that to say that my friend and chairman, Sen. Letourneau, if we'd had this transportation planning it wouldn't have been 20 years while you waited for Route 93 to get done. The amendment streamlines the language of the bill. The studies and recommendations allowed and required under this bill will address the relationship of economic, industrial and commercial development within the regions of the state, and will take into consideration the capacity of the transportation system in the region. The Committee recommends passage with amendment. Thank you,.

(The Chair recognized Sen. Letourneau for a question of Sen. Burling.)

SENATOR LETOURNEAU: Would you believe last night when I was getting the presentation for Interstate 93, the gentleman who was the engineer and architect of the widening project told us that the road would last 20 years. Now, the road we're trying to fix was built 45 years ago and it's the same road, and I asked him how that could be.

SENATOR BURLING: It's a good question.

**The question is on the adoption of Committee Amendment 1060s.
Committee Amendment 1060s adopted.**

**The question is on the adoption of Ought to Pass as Amended
on SB 452.**

**Motion of Ought to Pass as Amended adopted, bill ordered to Third
Reading.**

Sen. Letourneau is in opposition to SB 452.

RESOLUTION

Sen. Foster moved that the Senate adjourn from the Early Session, that the business of the Late Session be in order at the present time, that all bills and resolutions ordered to Third Reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

Motion to adjourn adopted.

Adjournment from Early Session.

LATE SESSION

Third Reading and Final Passage

SB 308-FN-A, preventing potential double taxation on the identical gross business profits of business organizations.

SB 312-FN, relative to insurance coverage for obesity and morbid obesity.

SB 321, relative to construction or renovation of regional vocational centers, transferring certain positions from the pari-mutuel commission to the department of safety, and requiring certain operating budget reductions.

SB 323-FN, repealing a provision relative to the calculation of multiple concurrent or consecutive sentences of imprisonment.

SB 327-FN, relative to compensation for state employees injured in the line of duty.

SB 329, relative to payment of members of screening panels for medical injury claims.

SB 331-FN, establishing new positions and realigning functions at the department of corrections.

SB 341, prohibiting digital advertising devices on certain highways.

SB 342-FN-L, establishing a mechanism for expediting relief from municipal actions which deny, impede, or delay qualified proposals for workforce housing.

SB 348, relative to the certification of forensic counselors by the board of forensic counselors.

SB 358, relative to mooring permits.

SB 365, relative to the commission to study childhood lead poisoning prevention laws, policies, and standards in New Hampshire.

SB 373, relative to definitions for and the application of the civil unions law to the retirement system.

SB 378, authorizing the supreme court to establish a business and commercial dispute docket in the superior court.

SB 379, relative to boating while intoxicated and transporting alcoholic beverages by a minor.

SB 383, establishing a commission to develop a plan for the expansion of transmission capacity in the north country.

SB 384, relative to the repair of septic systems prior to the sale of waterfront property.

SB 389, relative to privileged communications between health care providers and minor children.

SB 396, relative to the establishment of a statewide transportation policy.

SB 412, establishing the office of technology development and telecommunications planning and the position of director of telecommunications in the department of resources and economic development.

SB 414, authorizing special elections to fill vacancies in elective town offices.

SB 416, relative to subdivision and site plan regulation waivers.

SB 419, relative to the duties of the energy planning and advisory board and restructuring policy principles.

SB 421-L, relative to workforce housing.

SB 429, relative to driver education courses in other states.

SB 433, relative to confidential communications between a physician and a patient.

SB 438, relative to contractor accountability and disclosure in the public works construction procurement process.

SB 449, relative to the status of emergency services volunteers.

SB 450, requiring the New Hampshire Citizens Health Initiative to provide an annual summary to the general court.

SB 451, authorizing rate recovery for electric public utilities investments in distributed energy resources.

SB 452, relative to transportation planning.

SB 462, limiting liability for overseers of public welfare when acting in the course of their official duties.

SB 465, relative to the laws regulating trusts and trust companies in New Hampshire.

SB 474, relative to registers of deeds and reports of county officers.

SB 482, relative to ethical standards for volunteer service in the executive branch.

SB 489, establishing a commission to study erecting a fire tower on Copple Crown mountain in Brookfield.

- SB 495-FN**, prohibiting Internet solicitation and exploitation of children.
- SB 502-FN**, relative to unemployment compensation.
- SB 512-FN**, relative to emergency management powers.
- SB 516-FN-L**, relative to aid for county bridges.
- SB 523**, relative to requirements for the estuary alliance for sewage treatment to take and hold land.
- SB 525**, establishing the first Saturday in May as Emergency Medical Services Provider Recognition Day.
- SB 530-FN-A-L**, relative to kindergarten aid.
- SB 539-FN-L**, relative to the cost of an adequate education and provision of fiscal capacity disparity aid.
- SB 540-FN**, relative to New Hampshire HealthFirst, an affordable, well-ness-based health insurance plan for small employers.
- SB 541**, relative to an expedited process for certificate of need review and membership of the health services planning and review board.
- SB 542**, relative to a mediated settlement dispute in the town of Rye.
- SB 543**, establishing a commission to study court security.
- SCR 10**, urging the New Hampshire delegation to actively seek an increase in federal funding for wastewater treatment facility improvements.
- SCR 11**, supporting the application of Taiwan for observer status at the World Health Organization.

ANNOUNCEMENTS

RESOLUTION

Sen. Foster moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, referring bills to committee, scheduling hearings, sending and receiving messages, and processing enrolled bill reports and amendments.

Motion to recess adopted.

The Senate is in recess to the Call of the Chair.

CORRECTED COMMITTEE AMENDMENT TITLE

SB 389, relative to the protection of children's medical records in abuse and neglect and child custody cases. Judiciary Committee. Ought to Pass with Amendment, Vote 4-0. Senator Gottesman for the committee.

Sen. Sgambati, Dist. 4

March 10, 2008

2008-0945s

05/04

Amendment to SB 389

Amend the title of the bill by replacing it with the following:

AN ACT relative to privileged communications between health care providers and minor children.

Amend the bill by replacing all after the enacting clause with the following:

1 Physicians and Surgeons; Confidential Communications. Amend RSA 329:26 to read as follows:

329:26 Confidential Communications. The confidential relations and communications between a physician or surgeon licensed under provisions of this chapter and the patient of such physician or surgeon are placed on the same basis as those provided by law between attorney and client, and, except as otherwise provided by law, no such physician or surgeon shall be required to disclose such privileged communications. Confidential relations and communications between a patient and any person working under the supervision of a physician or surgeon that are customary and necessary for diagnosis and treatment are privileged to the same extent as though those relations or communications were with such supervising physician or surgeon. ***The confidential relations and communications under this section apply to minor children who are patients of a physician or surgeon.*** This section shall not apply to investigations and hearings conducted by the board of medicine under RSA 329, any other statutorily created health occupational licensing or certifying board conducting licensing, certifying, or disciplinary proceedings or hearings conducted pursuant to RSA 135-C:27-54 or RSA 464-A. This section shall also not apply to the release of blood samples and the results of laboratory tests for blood alcohol content taken from a person who is under investigation for driving a motor vehicle while such person was under the influence of intoxicating liquors or controlled drugs. The use and disclosure of such information shall be limited to the official criminal proceedings.

2 Mental Health Practitioners; Privileged Communications. Amend RSA 326-B:35, I to read as follows:

I. Confidential communications between licensees and their clients are privileged in the same manner as those provided by law between physician and patient, and, except as otherwise provided by law, no licensee shall be required to disclose such privileged communications. Confidential communications between a client of a licensee and any person working under the supervision of such licensee to provide services that are customary and necessary for diagnosis and treatment are privileged to the same extent as would be the same communications between the supervising licensee and the client. ***The confidential relations and communications under this section apply to minor children who are patients of a licensee.***

3 Nurses; Privileged Communications. Amend RSA 330-A:32 to read as follows:

330-A:32 Privileged Communications. The confidential relations and communications between any person licensed under provisions of this chapter and such licensee's client are placed on the same basis as those provided by law between attorney and client, and nothing in this chapter shall be construed to require any such privileged communications to be disclosed, unless such disclosure is required by a court order. Confidential relations and communications between a client and any person working under the supervision of a person licensed under this chapter which are necessary and customary for diagnosis and treatment are privileged to the same extent as though those relations or communications were with the supervising person licensed under this chapter, unless such disclosure is required by a court order. ***The confidential relations and communications under this section apply to minor children who are clients of a licensee.*** This section shall not apply to hearings conducted pursuant to RSA 135-C:27-54 or RSA 464-A.

4 Effective Date. This act shall take effect 60 days after its passage.

2008-0945s**AMENDED ANALYSIS**

This bill provides that confidential communications between a physician, nurse, or mental health practitioner and a minor child are privileged.

The question is on the adoption of Committee Amendment 0945s. Committee Amendment 0945s adopted.

The question is on the adoption of Ought to Pass as Amended on SB 389.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

Out of Recess.

LATE SESSION

Sen. Foster moved that the Senate adjourn from the Late Session.

Motion to adjourn adopted.

Adjournment from the Late Session.

March 27, 2008

The Senate reconvened at 10:00 a.m., a quorum being present.

The Reverend Canon Timothy Rich, chaplain to the Senate, offered the following remarks and prayer:

On this day in 1866 then President Andrew Johnson vetoed a civil rights bill which later would become the Fourteenth Amendment. This amendment, as you might recall, extended liberties and rights granted by the Bill of Rights to former slaves. One hundred and forty-two years later, his veto serves as a reminder that even our most thoughtful of political leaders can come out on the wrong side of an issue. I don't know whether it was personal opinion or politics or public sentiment that moved President Johnson to veto that bill, but today I think we would all agree it's a good thing that the law and practices regarding civil rights have changed. And it does make me curious, what will the leaders and people a hundred years from now wonder about with regard to some of the decisions and policies and practices of our time? As you deliberate today, do keep in mind that politics is not only the art of the possible, but more, as one person noted, it is the "art of making possible tomorrow what seems impossible today."

This prayer I share with you is based upon a prayer first written by one of my most favorite voices, the Reverend Ted Loder. Let us pray:

Wondrous Worker of Wonders, we praise You, not alone for what has been, or for what is, but for what has yet to be. Turn loose the members of this body, that they may go with You to the edge of now and maybe to welcome the new, to see their possibilities, to accept their limits; and then move them to begin living all the way to the limits of compassion and justice, until released by hope, they embrace others as You and this time as Your Kingdom come.

Amen

Sen. Bragdon led the Pledge of Allegiance.

INTRODUCTION OF GUESTS AND PRESENTATIONS

Doris Haddock, "Granny D.," Dublin, NH.

Governor Walter Peterson.

Representatives Peter Allen, Jim Splaine, Barbara Richardson, and Betty Hall.

Anna Salisbury, paralegal student, McIntosh College.

Senate Page: Emerson Lennon, Bishop Brady High School

MOTION TO VACATE

Sen. Burling moved to vacate HB 1585-FN, from the Executive Departments and Administration Committee to the Ways and Means Committee.

Motion adopted.

HB 1585-FN is vacated to Ways and Means Committee.

HB 1585-FN, relative to regulation of fuel gas fitters by the state fire marshal is vacated to the Ways and Means Committee.

COMMITTEE REPORTS**SPECIAL ORDER**

President Larsen moved, without objection, to Special-Order HB 1151 to the end of today's Calendar.

HB 1151, relative to reporting dates for the instream flow pilot program. Energy, Environment and Economic Development Committee. Ought to Pass with Amendment, Vote 6-0. Senator Fuller Clark for the committee.

HB 385-FN, relative to licensing and insurance fees. Commerce, Labor and Consumer Protection Committee. Ought to Pass, Vote 4-0. Senator Gottesman for the committee.

SENATOR GOTTESMAN: Thank you, Madam President. I move House Bill 385-FN ought to pass. This bill is at the request of the Insurance Department and makes a variety of technical and organizational changes in the manner in which fees are charged for registration with the Insurance Department. The changes include, among other things, the realignment of certain provisions relating to insurance producers in the insurance fee statute, RSA 400-A:29, putting all references to producers in one section and marginally changing certain insurance fees for license applications, renewals of claims adjustors and public adjustors, in order to reflect the availability for them to file by nonelectronic filings. The fee reductions and consolidations are intended to provide greater incentive for technology to be utilized more effectively. The Department estimates that the overall impact of these changes will affect about five percent of the licensing population and result in additional general fund revenues of approximately \$100,000 per year. The Commerce, Labor and Consumer Protection Committee asks for your support on House Bill 385, ought to pass. Thank you, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on HB 385-FN.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 1152-FN, relative to interpreting statutory deadlines. Commerce, Labor and Consumer Protection Committee. Ought to Pass, Vote 4-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Madam President. I move House Bill 1152 ought to pass. This bill permits documents and fees to be filed on the next business day if a statute specifies a deadline that falls on a weekend or legal holiday. The Committee heard testimony from the bill's prime sponsor who stipulated that without this interpretation filers and fee-payers could be subject to late penalties. For example, a business may be required to file its annual report on April 1st, but April 1st happens to fall upon a Sunday. This bill alleviates such an inconvenience by allowing documents and fees to be filed on the next business day. House Bill 1152 is a commonsense statutory interpretation that is consistent with existing state court filing rules. Please join the Commerce, Labor and Consumer Protection Committee in voting House Bill 1152 ought to pass. Thank you, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on HB 1152-FN.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 1230, requiring pharmacists to charge an insured person the usual and customary price or the copayment, whichever is less, of filling a prescription. Commerce, Labor and Consumer Protection Committee. Ought to Pass, Vote 4-0. Senator Roberge for the committee.

SENATOR ROBERGE: Thank you, Madam President. I move House Bill 1230 ought to pass. This bill requires pharmacists to charge an insured person the usual and customary price or the copayment, whichever is less, for filling a prescription. The Committee heard testimony from the bill's prime sponsor, who is Sen. Estabrook, who informed the committee members that many large chains such as Wal-Mart already follow this policy. A software change would allow pharmacies to charge the lower of the two costs resulting in savings for the consumer. The Committee voted unanimously to pass House Bill 1230 and did not have any opposition in either the House or the Senate. In addition, it is supported by the Coalition of Chain Pharmacies. The Committee on Labor and Consumer Protection asks for your support. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on HB 1230.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 1384, relative to the regulation of designated agents by the New Hampshire real estate commission, and relative to the disclosure of certain property conditions. Commerce, Labor and Consumer Protection Committee. Ought to Pass, Vote 5-0. Senator Reynolds for the committee.

SENATOR REYNOLDS: Thank you, Madam President. Madam President, I move House Bill 1384 ought to pass. This bill establishes and defines the practice of designated agent in the Real Estate Practice Act. This bill also requires buyers, agents, seller agents, designated agents, and facilitators to disclose certain conditions affecting a subject property. The Committee heard testimony from the New Hampshire Association of Realtors who informed the Committee that consumers will benefit from House Bill 1384 which establishes and defines the practice of "designated agency" in the Real Estate Practice Act. Designated agency is a brokerage practice that allows the managing broker in a single brokerage firm to designate different licensees in the firm to act as representatives for both the buyer and the seller. Under the practice of designated agency, agents are able to give their clients the full representation which is not

permitted with dual agency. The New Hampshire Association of Realtors has recommended state legislation to allow for designated representation in order to avoid complications that arise from dual agency. In addition, this bill is supported by the New Hampshire Association of Realtors, the New Hampshire Commercial and Investment Board of Realtors, the New Hampshire Real Estate Commission, the New Hampshire Association of Exclusive Buyer Agency, and 32 other states have already signed similar legislation into law. The Commerce, Labor and Consumer Protection Committee asks for your support in voting House Bill 1384 ought to pass. Thank you, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on HB 1384.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 777-FN-A, relative to agricultural exemptions from alteration of terrain permitting requirements and penalties for site development. Energy, Environment and Economic Development Committee. Inexpedient to Legislate, Vote 3-0. Senator Hassan for the committee.

SENATOR HASSAN: Thank you, Madam President. I move House Bill 777 inexpedient to legislate. This bill would establish an agricultural exemption from the alteration of terrain permitting requirements and a penalty for site development. However, the prime sponsor provided testimony that the unintended consequences of this bill are too great and therefore recommended that the Committee not pass this legislation. Please join the Energy, Environment and Economic Development Committee and vote inexpedient to legislate. Thank you.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on HB 777-FN-A.

Motion of Inexpedient to Legislate adopted.

HB 794-FN, establishing a commission to study the feasibility of public funding of state election campaigns. Election Law and Internal Affairs Committee. Ought to Pass, Vote 3-1. Senator Cilley for the committee.

SENATOR CILLEY: Thank you, Madam President. I move that HB 794-FN ought to pass. This bill establishes a commission to study the feasibility of public funding of state election campaigns. The campaign [sic] heard extensive testimony regarding the importance of investigating alternative campaign financing options, and this Committee agreed that it is worthy to explore such possibilities. It must also be emphasized that this bill does not have any monetary impact; it creates only a commission. A special note of appreciation is extended to "Granny D." Haddock who has made the cause of campaign finance reform the singular focus of her tireless and admirable efforts. There are numerous others who have stood fast on this issue as well, some of whom are with us today. It is my fervent hope that HB 794 is but one important step to bringing to fruition what Maine, Arizona and Connecticut have already implemented very successfully. I ask that you join the Election Law and Internal Affairs Committee for your support in HB 794. Thank you.

(The Chair recognized Sen. Bragdon to speak.)

SENATOR BRAGDON: Thank you, Madam President. I rise in support of HB 794. Though I must confess up until some time ago I was extremely skeptical of public financing. On a scale of 1 to 10, I was probably a "9" in my skepticism. The folks that Granny D.'s involved with had a forum

at Souhegan High School about a year ago, maybe a little bit more, and I attended that, and I remain skeptical, I'm probably now down to a "5" or a "6." But this is probably what's needed when somebody is skeptical still, is a commission to look at the issue, to study who else is doing it, why. I think logistics are going to be very important in this. But something like this can help either allay that skepticism or show some of the difficulties in there. But I fully support taking a look at something that I certainly don't fully understand myself. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on HB 794-FN.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

Sen. Letourneau is in opposition to HB 794-FN.

HB 1295, establishing a commission to study issues relating to stormwater. Energy, Environment and Economic Development Committee. Ought to Pass with Amendment, Vote 4-0. Senator Hassan for the committee.

Energy, Environment, and Economic Development

March 25, 2008

2008-1114s

06/09

Amendment to HB 1295

Amend paragraph I as inserted by section 2 of the bill by inserting after subparagraph (o) the following new subparagraphs:

(p) A member of the Nature Conservancy, appointed by that organization.

(q) A member of the New Hampshire Timberland Ownership Association, appointed by that organization.

(r) A member of the New Hampshire Farm Bureau, appointed by that organization.

SENATOR HASSAN: Thank you, Madam President. I move House Bill 1295 ought to pass with amendment. This bill establishes a commission to study issues relating to stormwater. The commission will study the following issues: the effects of stormwater and stormwater management on water quality, supply and quantity; terrestrial and aquatic habitat flooding and drought hazards; the relationship between land use change and stormwater; the relationship among an adequacy of federal, state and local regulations and practices that pertain to stormwater management; state and municipal infrastructure; construction and maintenance practices; the role of design construction and maintenance practices by residential, commercial and industrial property owners; and the effects of climate change on stormwater and stormwater management. The Committee received testimony from three groups who requested to be added to the commission membership. The Committee agreed with these suggestions and they are reflected in the committee amendment. Please join the Energy, Environment and Economic Development Committee and vote ought to pass with amendment. Thank you.

The question is on the adoption of Committee Amendment 1114s.

Committee Amendment 1114s adopted.

The question is on the adoption of Ought to Pass as Amended on HB 1295.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

HB 291, relative to licensure of fireworks sellers. Executive Departments and Administration Committee. Ought to Pass, Vote 5-0. Senator Kelly for the committee.

SENATOR KELLY: Thank you, Madam President. I move House Bill 291 ought to pass. This bill establishes a May 1st renewal date for fireworks licenses. This bill is a simple fix requested by the fireworks industry for license regulation. After a person has obtained a municipal permit to sell permissible fireworks he or she may then apply for a state license to sell permissible fireworks. The license will be valid for not more than one year from the date of issue, and may be renewed on May 1st of the following year. The initial fee will be prorated to correspond with the initial date of issue. House Bill 291 is fair and equitable and is supported by the state Fire Marshal. Please support the motion of ought to pass. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on HB 291.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 1166, relative to rate setting for interpreters for the deaf and hard of hearing. Executive Departments and Administration Committee. Ought to Pass, Vote 4-0. Senator Cilley for the committee.

SENATOR CILLEY: Thank you, Madam President. I move that House Bill 1166 ought to pass. This bill provides that a qualified interpreter shall be reimbursed by the appointing authority at a fixed rate, reflecting the most recent fee scheduled approved by the Department of Education and the Bureau of Vocational Rehabilitation. This bill is part of a cleanup effort of things that happened that we needed to take a look at. The set rate is part of – (laughing) – actually, that's already on there. The set rate is part of the cleanup of this bill and reinstates that authority. I knew that. Please support the motion of ought to pass. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on HB 1166.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 717, allowing municipalities to establish local community services and care planning boards. Public and Municipal Affairs Committee. Ought to Pass, Vote 5-0. Senator Roberge for the committee.

SENATOR ROBERGE: Thank you, Madam President. This bill allows municipalities to establish local community services and care-planning boards and prescribes the method for appointment, election of board members, and establishes the duties and authority of such boards. These boards will help cities and towns better coordinate their various community services, and municipalities should have the option to create them. The Public and Municipal Affairs Committee asks your support in ought to pass.

The question is on the adoption of committee recommendation of Ought to Pass on HB 717.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 185-FN, relative to economic revitalization zone credits. Ways and Means Committee. Ought to Pass, Vote 5-0. Senator Odell for the committee.

SENATOR ODELL: Thank you, Madam President. I move House Bill 185-FN ought to pass. The original version of the bill sought to extend

the sunset provision for the Community Reinvestment and Opportunity to Zones Program, known as CROP. The House amended the bill at the request of the Department of Resources and Economic Development. The legislation now makes three minor changes to the bill passed last year: it clarifies that companies may enter into multi-year agreements with DRED where the total credit exceeds a single year credit cap; it states that the tax credit is taken first against the Business Profits Tax rather than the Business Enterprise Tax; and it makes clear that prior agreements made under the CROP program remain in effect. Please join the Ways and Means Committee in voting this bill ought to pass. Thank you, Madam President.

Recess/Out of Recess.

MOTION TO TABLE

Sen. Hassan moved to have HB 185-FN laid on the table.

Motion adopted.

LAI D ON THE TABLE

HB 185-FN, relative to economic revitalization zone credits.

HB 1172-FN, changing the name of the pari-mutuel commission to the racing and charitable gaming commission. Ways and Means Committee. Ought to Pass, Vote 5-0. Senator Odell for the committee.

SENATOR ODELL: Thank you, Madam President. I move House Bill 1172-FN ought to pass. This bill changes the name of the Pari-Mutuel Commission to the Racing and Charitable Gaming Commission. The legislative intent is to clarify where the public can go to find information about racing and charitable gaming. Please join the Ways and Means Committee in voting this bill ought to pass. Thank you, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on HB 1172-FN.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 1266, allowing 50 caliber pistols to take game animals in the state. Wildlife, Fish and Game, and Agriculture Committee. Ought to Pass, Vote 3-0. Senator Janeway for the committee.

SENATOR JANEWAY: Thank you, Madam President. I move House Bill 1266 ought to pass. This bill will add .50 caliber pistols to the current list of six pistols that are allowed to take – i.e., kill – game animals in the state. The Department of Fish and Game testified in support at the hearing, as did the New Hampshire Wildlife Federation. Most of the use is in regions of the state where rifles are not permitted for deer. We were also told that there is little doubt that this pistol will dispatch deer or moose or anything else on its way there. The Committee heard that passage of this legislation may increase the number of hunters coming to the state, with all sorts of positive revenue implications. We did not hear whether or not there would be an increase in the number of game animals leaving the state. Please join the Wildlife, Fish and Game and Agriculture Committee in voting this bill ought to pass. Thank you.

The question is on the adoption of the committee recommendation of Ought to Pass on HB 1266.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 1277, relative to the definition of farm. Wildlife, Fish and Game, and Agriculture Committee. Ought to Pass, Vote 3-0. Senator Janeway for the committee.

SENATOR JANEWAY: Thank you, Madam President. This is going to begin to look like a filibuster if Sen. D'Allesandro doesn't return. I move House Bill 1277 ought to pass. This bill adds the words "viticultural" and "grapes" to the state agricultural definition. At the time the original definitions of agriculture and farming were incorporated into RSA 21:34-A, a local grape-growing and winemaking – or, excuse me – local grape-growing and winemaking were not significant agriculture endeavors or financially viable industries in New Hampshire. Currently, there are a significant number of in-state farm wineries and the development of better quality and hardier grape varieties has been the catalyst for success for the local winery industry. Please join the Wildlife, Fish and Game and Agriculture Committee in voting this bill ought to pass. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on HB 1277.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 1411, relative to rulemaking under the native plant protection act. Wildlife, Fish and Game, and Agriculture Committee. Ought to Pass, Vote 3-0. Senator Janeway for the committee.

SENATOR JANEWAY: Thank you again, Madam President. I move House Bill 1411 ought to pass. This bill inserts language into the New Hampshire Native Plant Protection Act that is similar to that in the Endangered Species Conservation Act, which will allow for the identification and collection of data about endangered plants without interfering with the property owner's management rights. The Natural Heritage Bureau collects and analyzes data on the status, location and distribution of rare or declining native plant species. They also determine whether any species of plants shall be protected species, and develop and implement measures for the protection, conservation, enhancement and management of native New Hampshire plants. Please join the Wildlife, Fish and Game and Agriculture Committee in voting this bill ought to pass. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on HB 1411.

Motion of Ought to Pass adopted, ordered to Third Reading.

HJR 10, urging congress to allow for the interstate sale of state inspected meat and poultry. Wildlife, Fish and Game, and Agriculture Committee. Ought to Pass, Vote 3-0. Senator Janeway for the committee.

SENATOR JANEWAY: Thank you, Madam President. I move HJR 10 ought to pass. This resolution urges Congress to allow for the interstate sale of state-inspected meat and poultry. I might add the only federally inspected facility in New Hampshire is in Goffstown, which may be convenient for some, but not for many in the nether regions of the state. Current federal law dictates that all state meat and poultry inspections be at least equal to federal standards, yet forbids state-inspected meat from being sold across state lines. In contrast, any meat and poultry inspected in foreign countries which have programs equal to federal standards can be marketed throughout the U.S. That hardly seems fair. New Hampshire's family farms would benefit from being able to sell their high-quality, state-inspected products in other states as well. And consumers,

increasingly interested in purchasing locally grown food, would eat well and save fuel. Please join the Wildlife, Fish and Game and Agriculture Committee in voting this bill ought to pass. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on HJR 10.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HJR 11, requesting the United States Department of Agriculture to provide redress for price reporting errors in milk prices. Wildlife, Fish and Game, and Agriculture Committee. Ought to Pass, Vote 3-0. Senator Janeway for the committee.

SENATOR JANEWAY: Thank you, Madam President. I move HJR 11 ought to pass. The U.S. Department of Agriculture sets the price that dairy farmers receive for this milk. The price of milk is determined by the USDA collecting data about the price of nonfat dry milk, in accordance with federal statutes. In 2'07 [sic] the USDA data errors appear to have caused New Hampshire farmers to receive less money for their milk than they should have had the data been accurate. This resolution simply requests that USDA, as early as possible, provide back payments to our dairy producers to compensate them for their losses, and further requests that USDA immediately institute auditing procedures to avoid future price errors, and in the interim provide the public with the raw data used to compute the nonfat dry milk prices on a regular basis. Please join the Wildlife, Fish and Game and Agriculture Committee in voting this bill ought to pass. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on HJR 11.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HJR 12, relative to support for research into colony collapse disorder. Wildlife, Fish and Game, and Agriculture Committee. Ought to Pass, Vote 3-0. Senator Janeway for the committee.

SENATOR JANEWAY: Thank you, Madam President. I promise this is the last. I move HJR 12 ought to pass. This resolution urges Congress to study, as well as look into funding for research, into an alarming crash in honeybee populations. These hard-working little creatures pollinate and play a crucial role in agriculture. And I speak with some authority as a former assistant beekeeper to my wife. Our bee colonies were collapsed by the attack of a bear several years ago prior to this current problem. And never recovered, I might add. But this pollination is responsible for \$15 billion in added crop value, particularly for specialty crops such as almonds, other nuts; berries, fruits and vegetables. Beginning in October 2'06 [sic], some beekeepers began reporting losses of 30 to 90 percent of their hives. While colony losses are not unexpected during winter weather, the magnitude of losses suffered by some beekeepers was highly unusual. This phenomenon, which currently does not have a recognizable underlying cause, has been termed "colony collapse disorder." Scientists are in the process of carrying out research to discover the cause of CCD and develop ways for beekeepers to respond to the problem. But the federal government needs to step up its effort, and that's the purpose in this resolution. So please join the Wildlife, Fish and Game and Agriculture Committee once again in voting this resolution ought to pass. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on HJR 12.

**Motion of Ought to Pass adopted, bill ordered to Third Reading.
Recess/Out of Recess.**

SPECIAL ORDER

HB 1151, relative to reporting dates for the instream flow pilot program. Energy, Environment and Economic Development Committee. Ought to Pass with Amendment, Vote 6-0. Senator Fuller Clark for the committee.

Sen. Fuller Clark, Dist. 24

March 18, 2008

2008-1057s

06/09

Amendment to HB 1151

Amend the bill by replacing all after section 3 with the following:

4 Change in Effective Date. Amend RSA 2007, 267:15, IV to read as follows:

IV. The remainder of this act shall take effect [~~April~~] **July 1, 2008.**

5 Repeal. The following are repealed:

I. 2007, 267:13, relative to a contingency.

II. 2007, 267:15, II and III, relative to effective dates.

6 Effective Date.

I. Sections 4 and 5 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect 60 days after its passage.

SENATOR FULLER CLARK: Thank you very much, Madam President. I move House Bill 1151 ought to pass with amendment. This bill extends the reporting dates for the instream flow pilot program. The Department of Environment Services has asked for this legislation because they have discovered that the level of effort and time necessary for full stakeholder and legislative participation for the development of final protected instream flows has exceeded original expectations. The Department is requesting additional time to provide for more stakeholder review and input. I would ask you to please join the Energy, Environment and Economic Development Committee and vote ought to pass with the amendment. And then, Madam President, I am prepared to bring forward an additional amendment. Thank you.

The question is on the adoption of Committee Amendment 1057s.

Committee Amendment 1057s adopted.

The following Senators asserted Rule 42 on HB 1151: Burling, Estabrook, Gottesman and Reynolds.

Sen. Fuller Clark offered a floor amendment.

Sen. Fuller Clark, Dist. 24

March 26, 2008

2008-1125s

09/10

Floor Amendment to HB 1151

Amend the title of the bill by replacing it with the following:

AN ACT relative to reporting dates for the instream flow pilot program and relative to certain requirements under the comprehensive shoreland protection act.

Amend the bill by replacing all after section 3 with the following:

4 Repeal. The following are repealed:

- I. RSA 483-B:5-a, I-IV, relative to permit required.
- II. RSA 483-B:5-a, V, relative to permit required.
- III. RSA 483-B:4, VII-a, relative to definition of impervious surface.
- IV. RSA 483-B:4, X-a, relative to definition of natural ground cover.
- V. RSA 483-B:4, XI-a and XI-b, relative to nonconforming lot of record and nonconforming structure.
- VI. RSA 483-B:4, XXIV-a, relative to definition of undisturbed state.

5 Definition. RSA 483-B:4, XVI(c) is repealed and reenacted to read as follows:

(c) Rivers, meaning all year-round flowing waters of fourth order or higher, as shown on the now current version of the U.S. Geological Survey 7 ½' topographic maps. Stream order shall be determined using the Strahler method, whereby the highest year-round streams in a watershed are first order streams, their juncture yields second order streams, the juncture of second order streams yields third order streams, et seq. A listing of the streams of fourth order and higher shall be prepared and maintained by the office of energy and planning and delivered to the commissioner 30 days after the effective date of this act.

6 Definition. RS 483-B:4, XXVI is repealed and reenacted to read as follows:

XXVI. "Water dependent structure" means a structure that services and supports activities that require direct access to, or contact with the water, or both, as an operational necessity and that requires a permit under RSA 482-A, including but not limited to a dock, wharf, pier, breakwater, beach, boathouse, retaining wall, or launching ramp.

7 Prior Approval; Permits. RSA 483-B:6 is repealed and reenacted to read as follows:

483-B:6 Prior Approval; Permits.

I. Within the protected shoreland, any person intending to:

(a) Engage in any earth excavation activity shall obtain all necessary local approvals in compliance with RSA 155-E.

(b) Construct a water-dependent structure, alter the bank, or construct or replenish a beach shall obtain approval and all necessary permits pursuant to RSA 482-A.

(c) Install a septic system as described in RSA 483-B:9, V(b)(1)-(3) shall obtain all permits pursuant to RSA 485-A:29.

(d) Conduct an activity resulting in a contiguous disturbed area exceeding 50,000 square feet shall obtain a permit pursuant to RSA 485-A:17.

(e) Subdivide land as described in RSA 483-B:9, V(d) and (e) shall obtain approval pursuant to RSA 485-A:29.

II. In applying for these approvals and permits, such persons shall demonstrate to the satisfaction of the department that the proposal meets or exceeds the development standards of this chapter. The department shall grant, deny, or attach reasonable conditions to a permit listed in subparagraphs I(a)-(e), to protect the public waters or the public health, safety or welfare. Such conditions shall be related to the purposes of this chapter.

8 Minimum Protection Standards. RSA 483-B:9, IV-b is repealed and reenacted to read as follows:

IV-b. Public utility lines and associated structures and facilities shall be permitted by the commissioner as necessary, consistent with the purposes of this chapter and other state law.

9 Waterfront Buffer. RSA 483-B:9, V is repealed and reenacted to read as follows:

V. The following minimum standards shall apply to the protected shoreland provided that forest management not associated with shoreland development or land conversion, and conducted in compliance with RSA 227-J:9; forestry involving water supply reservoir watershed management; or agriculture conducted in accordance with best management practices; shall be exempt from the provisions of this chapter:

(a) NATURAL WOODLAND BUFFER.

(1) Where existing, a natural woodland buffer shall be maintained within 150 feet of the reference line. The purpose of this buffer shall be to protect the quality of public waters by minimizing erosion, preventing siltation and turbidity, stabilizing soils, preventing excess nutrient and chemical pollution, maintaining natural water temperatures, maintaining a healthy tree canopy and understory, preserving fish and wildlife habitat, and respecting the overall natural condition of the protected shoreland.

(2) Within the natural woodland buffer of the protected shoreland under conditions defined in RSA 483-B:9, V, all of the following prohibitions and limitations shall apply:

(A) Not more than a maximum of 50 percent of the basal area of trees, and a maximum of 50 percent of the total number of saplings shall be removed for any purpose in a 20-year period. A healthy, well-distributed stand of trees, saplings, shrubs, ground cover, and their living, undamaged root systems shall be left in place.

(B) Any person applying to the department for a septic system construction approval or alteration of terrain permit pursuant to RSA 485-A, or an excavating and dredging permit pursuant to RSA 482-A, within the protected shoreland shall include photographic documentation of the natural woodland buffer.

(C) Structures, as defined in RSA 483-B:4, XXII, within the natural woodland buffer shall be afforded an opening for building construction that shall be excluded when computing the percentage limitations under subparagraph (a)(2)(A).

(D) Dead, diseased, unsafe, or fallen trees, saplings, shrubs, or ground cover may be removed. Their removal shall not be used in computing the percentage limitations under subparagraph (a)(2)(A).

(E) Stumps and their root systems, which are located within 50 feet of the reference line, shall be left intact in the ground, unless removal is specifically approved by the department under RSA 482-A.

(F) Preservation of dead and living trees that provide dens and nesting places for wildlife is encouraged.

(G) Planting efforts that are beneficial to wildlife are encouraged.

(b) SEPTIC SYSTEMS.

(1) All new lots, including those in excess of 5 acres, created within the protected shoreland are subject to subdivision approval by the department of environmental services under RSA 485-A:29.

(2) The following conditions, based on the characteristics of the receiving soil as they relate to U.S. Department of Agriculture, Natural Resources Conservation Service drainage classes, shall dictate the setback requirements for all new leaching portions of new septic systems, as follows:

(A) Adjacent to ponds, lakes, estuaries, and the open ocean.

(i) Where the receiving soil downgradient of the leaching portions of a septic system is a porous sand and gravel material with a percolation rate equal to or faster than 2 minutes per inch, the setback shall be at least 125 feet from the reference line;

(ii) For soils with restrictive layers within 18 inches of the natural soil surface, the setback shall be at least 100 feet from the reference line; and

(iii) For all other soil conditions, the setback shall be at least 75 feet from the reference line.

(B) Adjacent to rivers the setback shall be no less than 75 feet.

(3) The placement of all septic tanks and leaching portions of septic systems for replacement systems shall comply with the requirements of subparagraph (b)(2), to the maximum extent feasible.

(c) EROSION AND SILTATION.

(1) All new structures, modifications to existing structures, and excavation or earth moving within protected shoreland shall be designed and constructed in accordance with rules adopted by the department under RSA 541-A for terrain alteration under RSA 485-A:17, to manage stormwater and control erosion and sediment, during and after construction.

(2) New structures and all modifications to existing structures within the protected shoreland shall be designed and constructed to prevent the release of surface runoff across exposed mineral soils.

(3) A permit under RSA 485-A:17, I shall be required for improved, developed, or subdivided land whenever there is a contiguous disturbed area exceeding 50,000 square feet that is either partially or wholly within protected shoreland.

(d) MINIMUM LOTS AND RESIDENTIAL DEVELOPMENT. In the protected shoreland:

(1) The minimum size for new lots in areas dependent upon on-site septic systems shall be determined by soil type lot size determinations, as established by the department of environmental services under RSA 485-A and rules adopted to implement it.

(2) For projects in areas dependent upon on-site sewage and septic systems, the total number of residential units in the protected shoreland, whether built on individual lots or grouped as cluster or condominium development, shall not exceed:

(A) One unit per 150 feet of shoreland frontage; or

(B) For any lot that does not have direct frontage, one unit per 150 feet of lot width as measured parallel to the shoreland frontage that lies between the lot and the reference line.

(3) No lot dependent upon an on-site septic system, having frontage on public waters, shall be created with less than 150 feet of shoreland frontage.

(4) Lots in areas serviced by municipal sewers shall conform to municipal minimum lot standards, and shall not be subject to any shoreland frontage requirement, except as provided by municipal standards.

(5) Lots and residential units outside of the protected shoreland shall not be subject to this chapter.

(e) MINIMUM LOTS AND NON-RESIDENTIAL DEVELOPMENT. In the protected shoreland:

(1) The minimum size for new non-residential lots in areas dependent upon on-site septic systems shall be determined by soil type lot size determinations, as set forth under rules adopted under RSA 541-A.

(2) Non-residential development requiring on-site water, sewage, and septic systems shall not be constructed on lots less than 150 feet in width.

(3) Non-residential lots in areas serviced by municipal sewers shall conform to municipal minimum lot standards.

(4) Non-residential lots outside of the protected shoreland shall not be subject to this chapter.

(f) **COMMON OWNERS AND RESIDENTIAL OR NON-RESIDENTIAL DEVELOPMENT.** In the protected shoreland, waterfront parcels held in common by one or more owners of contiguous interior parcels may be developed, but only in a manner consistent with the provisions of this chapter. Care shall be taken for the adequate provision of parking, toilet facilities, and related support systems to minimize the project's impact on the public waters.

(g) The commissioner shall have the authority to grant variances from the minimum standards of this section. Such authority shall be exercised subject to the criteria which govern the grant of a variance by a zoning board of adjustment under RSA 674:33, I(b).

10 Nonconforming Structures. RSA 483-B:11 is repealed and reenacted to read as follows:

483-B:11 Nonconforming Structures.

I. Except as otherwise prohibited by law, nonconforming structures, erected prior to July 1, 1994, located within the protected shoreland may be repaired, renovated, or replaced in kind using modern technologies, provided the result is a functionally equivalent use. Such repair or replacement may alter the interior design or existing foundation, but no expansion of the existing footprint or outside dimensions shall be permitted. An expansion that increases the sewerage load to an on-site septic system, or changes or expands the use of a septic system or converts a structure to condominiums or any other project identified under RSA 485-A:29-44 and rules adopted to implement it shall require approval by the department. Between the primary building line and the reference line, no alteration shall extend the structure closer to the public water, except that the addition of a deck or open porch is permitted up to a maximum of 12 feet towards the reference line.

II. When reviewing requests for the redevelopment of sites that contain nonconforming structures erected prior to July 1, 1994, the commissioner shall review proposals which are more nearly conforming than the existing structures, and may waive some of the standards specified in RSA 483-B:9, so long as there is at least the same degree of protection provided to the public waters. For the purposes of this section, a proposal that is "more nearly conforming" means a proposal for significant changes to the location or size of existing structures that bring the structures into greater conformity, or a proposal for changes to other aspects of the property, including but not limited to stormwater management, wastewater treatment or traffic volume or flow, or both types of proposal which significantly improve wildlife habitat or resource protection.

11 New Section; Permit Required; Exemption Amend RSA 483-B by inserting after section 5-a the following section:

483-B:5-b Permit Required; Exemption.

I.(a) No person shall commence construction, excavation, or filling activities within the protected shoreland without obtaining a permit from the department to ensure compliance with this chapter.

(b) The permit application fee shall be \$100 plus \$.10 per square foot of area affected by the proposed activities and shall be deposited in the wetlands and shorelands review fund established under RSA 482-A:3, III. Such fees shall be capped as follows:

- (1) For projects of 0-9,999 square feet, \$750.
- (2) For projects of 10,000-24,999 square feet, \$1,875.
- (3) For projects of 25,000 square feet or more, \$3,750.

II. Timber harvesting operations permitting requirements shall be in accordance with RSA 485-A:17, IV and therefore shall be exempt from the permitting requirement under paragraph I.

III. Construction of public roads, public utility lines and associated structures and facilities, and public water access facilities shall be exempt from the permitting fees of paragraph I.

IV. Impacts in the protected shoreland that receive a permit in accordance with RSA 482-A shall not require a permit under this section.

V.(a) Within 30 days of receipt of an application for a permit or 75 days of receipt of an application for a permit that will require a variance of the minimum standard of RSA 483-B:9, V or a waiver of the minimum standards of RSA 483-B:9, the department shall request any additional information required to complete its evaluation of the application, and provide the applicant with any written technical comments the department deems necessary. Any request for additional information shall specify that the applicant submit such information as soon as practicable and notify the applicant that if all of the requested information is not received within 60 days of the request, the department shall deny the application.

(b) When the department requests additional information pursuant to subparagraph (a), the department shall, within 30 days of the department's receipt of the information:

(1) Approve the application and issue a permit;

(2) Deny the application, in whole or in part; or

(3) Extend the time for response for good cause and with the written agreement of the applicant.

(c) Where no request for additional information is made, the department shall, within 30 days of receipt of the application for a permit or 75 days of receipt of an application for a permit that will require a variance of the minimum standard of RSA 483-B:9, V or a waiver of the minimum standards of RSA 483-B:9, approve or deny the application, in whole or in part.

(d) If the department fails to render a decision in the time frame provided in this paragraph, the application shall be deemed to be approved and a permit shall be issued.

12 New Paragraph; Definitions. Amend RSA 483-B:4 by inserting after paragraph VII-a the following new paragraph:

VII-b. "Impervious surface" means any modified surface that cannot effectively absorb or infiltrate water. Examples of impervious surfaces include, but are not limited to, roofs, decks, patios, and paved, gravel, or crushed stone driveways, parking areas, and walkways unless designed to effectively absorb or infiltrate water.

13 New Paragraph; Definitions. Amend RSA 483-B:4 by inserting after paragraph X-a the following new paragraph:

X-b. "Natural ground cover" means any herbaceous plant or any woody seedling or shrub generally less than 3 feet in height. Natural ground cover shall also include naturally occurring leaf or needle litter, stumps, decaying woody debris, stones, and boulders. Natural ground cover shall not include lawns, invasive species as listed by the department of agriculture, markets, and food in accordance with RSA 430:53, III, exotic species as designated by rule of the department of environmental services in accordance with RSA 487:24, VII, imported organic or stone mulches, or other artificial materials.

14 Definitions. RSA 483-B:4, XI-c is repealed and reenacted to read as follows:

XI-c. "Nonconforming lot of record" means an existing lot which does not conform to the provisions of this chapter.

XI-d. "Nonconforming structure" means a structure that, either individually or when viewed in combination with other structures on the property, does not conform to the provisions of this chapter, including but not limited to the impervious surface limits of RSA 483-B:9, V(g).

XI-e. "Ordinary high water mark" means the line on the shore, running parallel to the main stem of the river, established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the immediate bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas. Where the ordinary high water mark is not easily discernable, the ordinary high water mark may be determined by the department of environmental services.

15 Definitions. RSA 483-B:4, XVI(c) is repealed and reenacted to read as follows:

(c) Rivers, meaning all year-round flowing waters of fourth order or higher and all rivers and river segments designated as protected under RSA 483:15. Stream order shall be determined using the New Hampshire hydrography dataset archived by the geographically referenced analysis and information transfer system (GRANIT) at the complex systems research center of the university of New Hampshire, and developed by GRANIT in collaboration with the department of environmental services. A listing of the streams of fourth order and higher shall be prepared and periodically updated by the GRANIT at the complex systems research center of the university of New Hampshire and delivered to the commissioner 30 days after the effective date of this section.

16 New Paragraph; Definitions. Amend RSA 483-B:4 by inserting after paragraph XXIV-a the following new paragraph:

XXIV-b. "Undisturbed state" means native vegetation allowed to grow without interference.

17 Definitions. RSA 483-B:4, XXVI is repealed and reenacted to read as follows:

XXVI. "Water dependent structure" means a structure that is a dock, wharf, pier, breakwater, beach, boathouse, retaining wall, or launching ramp or other similar structure, or any part thereof, built over, on, or in the waters of the state.

18 Other Required Permits and Approvals. RSA 483-B:6 is repealed and reenacted to read as follows:

483-B:6 Other Required Permits and Approvals.

I. Within the protected shoreland, any person intending to:

(a) Engage in any earth excavation activity shall obtain all necessary local approvals in compliance with RSA 155-E.

(b) Construct a water-dependent structure, alter the bank, or construct or replenish a beach shall obtain approval and all necessary permits pursuant to RSA 482-A.

(c) Install a septic system as described in RSA 483-B:9, V(c) shall obtain all permits pursuant to RSA 485-A:29.

(d) Conduct an activity resulting in a contiguous disturbed area exceeding 50,000 square feet shall obtain a permit pursuant to RSA 485-A:17.

(e) Subdivide land as described in RSA 483-B:9, V(e) and (f) shall obtain approval pursuant to RSA 485-A:29.

(f) Conduct an activity regulated under a local zoning ordinance shall obtain all necessary local approvals.

II. In applying for approvals and permits, pursuant to paragraph I, applicants shall demonstrate that the proposal meets or exceeds the development standards of this chapter. The department shall develop minimum standards for information to be required on or with all applications under paragraph I. The department or municipality shall grant, deny, or attach reasonable conditions to approvals or permits listed in subparagraphs I(a)-(f), to protect the public waters or the public health, safety or welfare. Such conditions shall be related to the purposes of this chapter.

III. The commissioner shall have the sole authority to issue variances and waivers of the provisions of this chapter as specifically authorized by this chapter.

IV. No variance, permit, or approval issued by a municipality shall exempt the owner from obtaining any other necessary permit or approval from the department as required by this chapter.

19 Minimum Shoreland Protection Standards. RSA 483-B:9, IV-b is repealed and reenacted to read as follows:

IV-b. Public utility lines and associated structures and facilities, public roads, and public water access facilities including boat ramps shall be permitted by the commissioner as necessary and consistent with the purposes of this chapter and other state law.

20 Waterfront Buffer. RSA 483-B:9, V is repealed and reenacted to read as follows:

V. The following minimum standards shall apply to areas and activities within the protected shoreland with the exception of forest management that is not associated with shoreland development or land conversion, and is conducted in compliance with RSA 227-J:9; forestry conducted by or under the direction of a water supplier for the purpose of managing a water supply watershed; and agriculture conducted in accordance with best management practices as required by RSA 483-B:3, III:

(a) MAINTENANCE OF A WATERFRONT BUFFER.

(1) The waterfront buffer shall be those protected shorelands within 50 feet of the reference line. The purpose of this buffer shall be to protect the quality of public waters while allowing homeowner discretion with regard to water access, safety, viewscape maintenance, and lot design.

(2) Within the waterfront buffer all of the following prohibitions and limitations shall apply:

(A) No chemicals, including pesticides of any kind or fertilizers of any kind except those specified in RSA 483-B:9, II(d), shall be applied.

(B) Rocks and stumps and their root systems shall be left intact in the ground unless removal is specifically approved by the department, pursuant to RSA 482-A or RSA 483-B:11, II.

(C) No natural ground cover shall be removed except as necessary for a foot path to water as provided under RSA 483-B:9, V(a)(2) (D)(viii), cutting those portions that have grown over 3 feet in height for the purpose of providing a view, or as specifically approved by the department, pursuant to RSA 482-A or 483-B:11, II.

(D) Starting from the northerly or easterly boundary of the property, and working along the shoreline, the waterfront buffer shall be divided into 50 by 50 foot segments. Within each segment a minimum combined tree and sapling score of at least 50 points shall be maintained. If for any reason there is insufficient area for a full segment, the number of points required to be maintained in that partial segment shall be proportional to that required of a full segment.

(i) Tree and sapling diameters shall be measured at 4 1/2 feet above the ground and are scored as follows:

Diameter	Score
1 inch to 6 inches	1
greater than 6 inches to 12 inches	5
greater than 12 inches	10

(ii) Dead, diseased, or unsafe trees or saplings shall not be included in scoring.

(iii) If the total tree and sapling score in any 50 foot by 50 foot segment exceeds 50 points, then trees and saplings may be removed as long as the sum of the scores for the remaining trees and saplings in that segment does not total less than 50 points. Trees and saplings may be removed from partial segments provided that the sum of the scores for the remaining trees and saplings in that partial segment is equal to or greater than the proportional point requirement.

(iv) The department may approve applications pursuant to RSA 482-A that include the planting of native trees and saplings as necessary to at least maintain either the existing combined tree and sapling score or the minimum score required. The department shall not approve any application that would result in a combined tree and sapling score less than the minimum score required where the segment initially meets the minimum score or would result in any reduction of the combined tree and sapling score where the segment does not initially meet the minimum score.

(v) Owners of lots that were legally developed prior to April 1, 2008 may maintain but not enlarge cleared areas, including but not limited to existing lawns and beaches, within the waterfront buffer. Conversion to or planting of cleared areas with native species of ground cover, shrubs, saplings, and trees is encouraged but shall not be required unless it is necessary to meet the requirements of subparagraphs (g)(2) or (g)(3), or RSA 483-B:11, II.

(vi) Normal trimming, pruning, and thinning of branches to the extent necessary to protect structures, maintain clearances, and provide views is permitted. Trimming, pruning, and thinning of branches for the purpose of providing views shall be limited to the bottom 1/2 of the trees or saplings.

(vii) When necessary for the completion of construction activities permitted in accordance with RSA 483-B:6, a temporary 12 foot wide access path shall be allowed. The access path shall be completely restored and replanted with native vegetation upon completion of construction except as allowed under subparagraph (viii).

(viii) A permanent 6-foot wide foot path to the water body, configured in a manner that will not concentrate storm water runoff or contribute to erosion, is allowed.

(b) MAINTENANCE OF A NATURAL WOODLAND BUFFER.

(1) A natural woodland buffer shall be maintained within 150 feet of the reference line. The first 50 feet of this buffer is designated the waterfront buffer and is subject to the additional requirements of subparagraph (a). The purpose of the natural woodland buffer shall be to protect the quality of public waters by minimizing erosion, preventing siltation and turbidity, stabilizing soils, preventing excess nutrient and chemical pollution, maintaining natural water temperatures, maintaining a healthy tree canopy and understory, preserving fish and wildlife habitat, and respecting the overall natural condition of the protected shoreland.

(2) Within the natural woodland buffer of a given lot:

(A) At least 50 percent of the area outside of impervious surfaces shall be maintained in an undisturbed state. Owners of lots legally developed prior to April 1, 2008 that do not comply with this standard are encouraged to, but shall not be required to, increase the percentage of area maintained in an undisturbed state, except as required by the department under RSA 483-B:11, II. The percentage of area maintained in an undisturbed state on nonconforming lots shall not be decreased.

(B) Any person applying to the department for a septic system construction approval or alteration of terrain permit pursuant to RSA 485-A, or an excavating and dredging permit pursuant to RSA 482-A, within the protected shoreland shall include photographic documentation of the natural woodland buffer.

(C) Dead, diseased, or unsafe, trees, saplings, or shrubs that pose an imminent hazard to structures or have the potential to cause personal injury may be removed regardless of any requirements that pertain to the natural woodland buffer under this chapter. Such exemptions shall not be used to contravene the intent of the law.

(D) Preservation of dead and living trees that provide dens and nesting places for wildlife is encouraged.

(E) Native species planting efforts that are beneficial to wildlife are encouraged.

(c) SEPTIC SYSTEMS.

(1) The subdivision of a parcel of land shall be subject to subdivision approval by the department of environmental services under RSA 485-A:29 if any portion of the land to be subdivided is within the protected shoreland.

(2) The following conditions, based on the characteristics of the receiving soil as they relate to U.S. Department of Agriculture, Natural Resources Conservation Service drainage classes, shall dictate the setback requirements for all new leaching portions of new septic systems, as follows:

(A) Adjacent to ponds, lakes, estuaries, and the open ocean.

(i) Where the receiving soil downgradient of the leaching portions of a septic system is a porous sand and gravel material with a percolation rate equal to or faster than 2 minutes per inch, the setback shall be at least 125 feet from the reference line;

(ii) For soils with restrictive layers within 18 inches of the natural soil surface, the setback shall be at least 100 feet from the reference line; and

(iii) For all other soil conditions, the setback shall be at least 75 feet from the reference line.

(B) Adjacent to rivers the setback shall be no less than 75 feet.

(3) The placement of all septic tanks and leaching portions of septic systems for replacement systems shall comply with the requirements of subparagraph (c)(2), to the maximum extent feasible.

(d) EROSION AND SILTATION.

(1) All new structures, modifications to existing structures, and excavation or earth moving within protected shoreland shall be designed and constructed in accordance with rules adopted by the department under RSA 541-A for terrain alteration under RSA 485-A:17, to manage stormwater and control erosion and sediment, during and after construction.

(2) New structures and all modifications to existing structures within the protected shoreland shall be designed and constructed to prevent the release of surface runoff across exposed mineral soils.

(3) A permit under RSA 485-A:17, I shall be required for improved, developed, or subdivided land whenever there is a contiguous disturbed area exceeding 50,000 square feet that is either partially or wholly within protected shoreland.

(e) MINIMUM LOTS AND RESIDENTIAL DEVELOPMENT. In the protected shoreland:

(1) The minimum size for new lots in areas dependent upon on-site septic systems shall be determined by soil type lot size determinations, as established by the department of environmental services under RSA 485-A and rules adopted to implement it.

(2) For projects in areas dependent upon on-site sewage and septic systems, the total number of residential units in the protected shoreland, whether built on individual lots or grouped as cluster or condominium development, shall not exceed:

(A) One unit per 150 feet of shoreland frontage; or

(B) For any lot that does not have direct frontage, one unit per 150 feet of lot width as measured parallel to the shoreland frontage that lies between the lot and the reference line.

(3) No lot having frontage on public waters, shall be created with less than 150 feet of shoreland frontage.

(4) Lots and residential units outside of the protected shoreland shall not be subject to this chapter.

(f) MINIMUM LOTS AND NON-RESIDENTIAL DEVELOPMENT. In the protected shoreland:

(1) The minimum size for new non-residential lots in areas dependent upon on-site septic systems shall be determined by soil type lot size determinations, as set forth under rules adopted under RSA 541-A.

(2) No lot having frontage on public water shall be created with less than 150 feet of shoreland frontage.

(3) Non-residential lots outside of the protected shoreland shall not be subject to this chapter.

(g) IMPERVIOUS SURFACES.

(1) No more than 20 percent of the area of a lot located within the protected shoreland shall be composed of impervious surfaces, except as provided in subparagraphs (2) and (3).

(2) The impervious surface area shall not exceed 25 percent provided that in the waterfront buffer, in addition to any other provisions that apply to such area under this chapter, no trees or saplings shall be removed as provided for in RSA 483-B:9, V(a)(2)(D)(iii) and such restriction is recorded in the chain of title for the property. In addition, if the natural tree and sapling cover in the waterfront buffer does not meet the 50-point minimum score of RSA 483-B:9, V(a)(2)(D) in any segment, then such segment shall be planted, as determined by rule of the department, with native trees, saplings, or natural ground cover in sufficient quantity, type, and location either to meet the minimum score or to provide at least an equivalent level of protection as offered by the minimum score.

(3) The impervious surface area shall not exceed 30 percent provided the conditions of subparagraph (2) are satisfied and a stormwater management system designed to ensure that post-development total runoff volume shall not exceed the pre-development total runoff volume, and approved by the department, shall be implemented and maintained.

(4) Property owners and developers are encouraged to seek creative solutions that utilize low impact development techniques.

(h) COMMON OWNERS AND RESIDENTIAL OR NON-RESIDENTIAL DEVELOPMENT. In the protected shoreland, waterfront parcels

held in common by one or more owners of contiguous interior parcels may be developed, but only in a manner consistent with the provisions of this chapter. Care shall be taken for the adequate provision of parking, toilet facilities, and related support systems to minimize the project's impact on the public waters.

(i) The commissioner shall have the authority to grant variances from the minimum standards of this section. Such authority shall be exercised subject to the criteria which govern the grant of a variance by a zoning board of adjustment under RSA 674:33, I(b).

21 Nonconforming Structures. RSA 483-B:11 is repealed and reenacted to read as follows:

483-B:11 Nonconforming Structures.

I. Except as otherwise prohibited by law, nonconforming structures located within the protected shoreland may be repaired, renovated, or replaced in kind using modern technologies, provided the result is a functionally equivalent use. Such repair or replacement may alter the interior design or existing foundation, but shall result in no expansion of the existing footprint except as authorized by the department pursuant to paragraph II. An expansion that increases the sewerage load to an on-site septic system, or changes or expands the use of a septic system or converts a structure to condominiums or any other project identified under RSA 485-A:29-44 and rules adopted to implement it shall require approval by the department. Between the primary building line and the reference line, no alteration shall extend the structure closer to the public water, except that the addition of a deck or open porch is permitted up to a maximum of 12 feet towards the reference line for nonconforming structures erected prior to July 1, 1994.

II. When reviewing requests for the redevelopment of sites that contain nonconforming structures or any expansions of nonconforming structures the commissioner shall review proposals which are more nearly conforming than the existing structures, and may waive some of the standards specified in RSA 483-B:9, so long as there is at least the same degree of protection provided to the public waters. For the purposes of this section, a proposal that is "more nearly conforming" means a proposal for significant changes to the location or size of existing structures that bring the structures into greater conformity, or a proposal for changes to other aspects of the property, including but not limited to stormwater management, wastewater treatment or traffic volume or flow, or both types of proposal which significantly improve wildlife habitat or resource protection.

22 Repeal. The following are repealed:

I. RSA 483-B:5-b, I(b), relative to permit application fees.

II. RSA 483-B:5-b, III, relative to exemptions from permit application fees.

23 Effective Date.

I. Paragraph II of section 4 of this act shall take effect April 1, 2008 at 12:02 a.m.

II. Paragraphs I and III-VI of section 4 and sections 5-10 of this act shall take effect April 1, 2008 at 12:01 a.m.

III. Section 22 of this act shall take effect July 1, 2011.

IV. The remainder of this act shall take effect October 1, 2008.

2008-1125s

AMENDED ANALYSIS

This bill extends the reporting dates for the instream flow pilot program.

This bill also changes the effective date for certain provisions of 2007, 267 and 2007, 269, relating to the comprehensive shoreland protection act, from April 1, 2008 to October 1, 2008.

SENATOR FULLER CLARK: Thank you very much. May I speak to the amendment as it's being handed out? This is Amendment –

PRESIDENT LARSEN: You may speak to that amendment.

SENATOR FULLER CLARK: – 1125s. And the first thing the amendment does is to replace the title of the bill so it will now read: “Relative to reporting dates for the instream flow program, and relative to certain requirements under the Comprehensive Shoreline [sic] Protection Act.” Last year you will remember that we significantly revised the state's shoreline protection act, including establishing a new permit requirement and adopting new standards to ensure the integrity of our shoreline areas. The new permit requirements and standards were to take effect on April 1st, 2008. The intent of the amendment is to change the implementation date for the new Shoreline [sic] Protection Act from April 1st to October 1st. There are several reasons for why we are requesting this change in the implementation date. First, the rules for the new Shoreline [sic] Protection Act did not pass until last Friday, March 21st, in JLCAR, just ten days before the current implementation date of April 1st. While the legislation was signed into law last June 29th, lay persons, landowners and builders must rely on the rules as well as legislation. Passage of the rules at such a late date leaves little or no time to adequately inform and educate our constituents on how this complex bill will actually work. And despite the excellent outreach of the Department of Environmental Services to inform interested parties about this bill, they still have not had time to inform them about the rules and any rule changes that are now going into effect as a result of the vote in JLCAR last week. Additionally, there continues to remain confusion around the interpretation of certain terms and definitions in the legislation – such terms as: no-cut zone, undisturbed, interference, fertilizer – that can only be corrected through statutory changes. Such language will be brought before the House next week through an amendment on Senate Bill 352, which also deals with shoreline protection.

Because both chambers will not be able to act on the simple extension of the effective date of the two laws, 2007 Laws, Chapter 267 and 269, before they take effect on April 1st, the floor amendment before you repeals and re-enacts the new permit requirement and the new standards, so as to take effect on October 1st, 2007. Section 4 of the amendment repeals the new permit requirements and new standards. Sections 5 to 10 of the amendment keep in place the current provisions of the Shoreline [sic] Protection Act, from the date HB 1151 is enacted until October 1st. Sections 11 through 21 re-enact the provisions we are repealing on October 1st, 2008. And section 22 is a prospective repeal of the current standards when the new standards take effect. The practical effect of Floor Amendment 1125s is to repeal and re-enact only the permit requirement and the new standards that were to take effect on April 1st. No other provisions of last year's laws, Chapter 267 and 269, are affected. There will be a short time between April 1st and the date HB 1151 is enacted, due to the fact that the House will not be meeting until April 16th. But it is my understanding that Commissioner Burack will not enforce the permit requirements or the new standards during this brief period. Thank you very much, Madam President. And I urge the members of the Senate to support this amendment. It is important with regard to our constituents, it's important with

regard to economic development, and it's equally important to make sure that when these new shoreline protection laws do take effect, that they are received in a climate of understanding and support, because they are essential to the long-term protection of our environment. Thank you.

Recess/Out of Recess.

Sen. Fuller Clark withdrew Floor Amendment 1125s.

(The Chair recognized Sen. Kenney for a question of Sen. Fuller Clark.)

SENATOR KENNEY: In your testimony that you mentioned prior to your reconsideration motion, you mentioned that the Commissioner of the Department of Environmental Services is going to waive that April 1st deadline until April 16th when the House is going to meet. Would you believe that I spoke to Rene Pelletier, who oversees the Shoreline [sic] Protection Act in his department at DES, who indicated that April 1st is the law and that there will be no waiver when it comes to the permitting process, as far as the effective date. Would you believe that?

SENATOR FULLER CLARK: I might believe that. I haven't had a chance to speak with Rene Pelletier. I do know that in previous conversations with the Commissioner that he intimated that he understood the situation, and that's where we stand until we're able to move these implementation dates around. Thank you.

SENATOR KENNEY: I would just say, just to follow up –

PRESIDENT LARSEN: Sen. Kenney, for a further question. If I could request the courtesy, that floor amendment was withdrawn temporarily to allow for a further motion. There will be a point when we can discuss the floor amendment; if you would hold your second question till the floor amendment is back before us, that would, I can assure you I will allow time for that question when the floor amendment is before us.

SENATOR KENNEY: Thank you, Madam President. I'll yield.

PRESIDENT LARSEN: Thank you for the courtesy.

PARLIAMENTARY INQUIRY

SENATOR FOSTER: Madam President, actually a parliamentary inquiry. If I wanted to make sure that my intent was clear in that I support an October 1st, 2008 deadline, might I move reconsideration on amendment, on the committee amendment?

PRESIDENT LARSEN: If you wish to reconsider the vote by which you adopted the committee floor amendment, you could move reconsideration and vote for reconsideration which would allow a revisiting and revote on that issue.

MOTION OF RECONSIDERATION

Sen. Foster, having voted with the prevailing side, moved reconsideration of the previous vote on the adoption of Committee Amendment 1057s on HB 1151.

Motion adopted.

Sen. Fuller Clark, Dist. 24

March 18, 2008

2008-1057s

06/09

Amendment to HB 1151

Amend the bill by replacing all after section 3 with the following:

4 Change in Effective Date. Amend RSA 2007, 267:15, IV to read as follows:

IV. The remainder of this act shall take effect [~~April~~] **July** 1, 2008.

5 Repeal. The following are repealed:

I. 2007, 267:13, relative to a contingency.

II. 2007, 267:15, II and III, relative to effective dates.

6 Effective Date.

I. Sections 4 and 5 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect 60 days after its passage.

The question is on the adoption of Committee Amendment 1057s on HB 1151.

Committee Amendment 1057s failed.

The following Senators asserted Rule 42 on HB 1151: Burling, Estabrook, Gottesman and Reynolds.

Sen. Fuller Clark reoffered Floor Amendment 1125s.

Sen. Fuller Clark, Dist. 24

March 26, 2008

2008-1125s

09/10

Floor Amendment to HB 1151

Amend the title of the bill by replacing it with the following:

AN ACT relative to reporting dates for the instream flow pilot program and relative to certain requirements under the comprehensive shoreland protection act.

Amend the bill by replacing all after section 3 with the following:

4 Repeal. The following are repealed:

I. RSA 483-B:5-a, I-IV, relative to permit required.

II. RSA 483-B:5-a, V, relative to permit required.

III. RSA 483-B:4, VII-a, relative to definition of impervious surface.

IV. RSA 483-B:4, X-a, relative to definition of natural ground cover.

V. RSA 483-B:4, XI-a and XI-b, relative to nonconforming lot of record and nonconforming structure.

VI. RSA 483-B:4, XXIV-a, relative to definition of undisturbed state.

5 Definition. RSA 483-B:4, XVI(c) is repealed and reenacted to read as follows:

(c) Rivers, meaning all year-round flowing waters of fourth order or higher, as shown on the now current version of the U.S. Geological Survey 7 ½' topographic maps. Stream order shall be determined using the Strahler method, whereby the highest year-round streams in a watershed are first order streams, their juncture yields second order streams, the juncture of second order streams yields third order streams, et seq. A listing of the streams of fourth order and higher shall be prepared and maintained by the office of energy and planning and delivered to the commissioner 30 days after the effective date of this act.

6 Definition. RS 483-B:4, XXVI is repealed and reenacted to read as follows:

XXVI. "Water dependent structure" means a structure that services and supports activities that require direct access to, or contact with the water, or both, as an operational necessity and that requires a permit under RSA 482-A, including but not limited to a dock, wharf, pier, break-water, beach, boathouse, retaining wall, or launching ramp.

7 Prior Approval; Permits. RSA 483-B:6 is repealed and reenacted to read as follows:

483-B:6 Prior Approval; Permits.

I. Within the protected shoreland, any person intending to:

(a) Engage in any earth excavation activity shall obtain all necessary local approvals in compliance with RSA 155-E.

(b) Construct a water-dependent structure, alter the bank, or construct or replenish a beach shall obtain approval and all necessary permits pursuant to RSA 482-A.

(c) Install a septic system as described in RSA 483-B:9, V(b)(1)-(3) shall obtain all permits pursuant to RSA 485-A:29.

(d) Conduct an activity resulting in a contiguous disturbed area exceeding 50,000 square feet shall obtain a permit pursuant to RSA 485-A:17.

(e) Subdivide land as described in RSA 483-B:9, V(d) and (e) shall obtain approval pursuant to RSA 485-A:29.

II. In applying for these approvals and permits, such persons shall demonstrate to the satisfaction of the department that the proposal meets or exceeds the development standards of this chapter. The department shall grant, deny, or attach reasonable conditions to a permit listed in subparagraphs I(a)-(e), to protect the public waters or the public health, safety or welfare. Such conditions shall be related to the purposes of this chapter.

8 Minimum Protection Standards. RSA 483-B:9, IV-b is repealed and reenacted to read as follows:

IV-b. Public utility lines and associated structures and facilities shall be permitted by the commissioner as necessary, consistent with the purposes of this chapter and other state law.

9 Waterfront Buffer. RSA 483-B:9, V is repealed and reenacted to read as follows:

V. The following minimum standards shall apply to the protected shoreland provided that forest management not associated with shoreland development or land conversion, and conducted in compliance with RSA 227-J:9; forestry involving water supply reservoir watershed management; or agriculture conducted in accordance with best management practices; shall be exempt from the provisions of this chapter:

(a) NATURAL WOODLAND BUFFER.

(1) Where existing, a natural woodland buffer shall be maintained within 150 feet of the reference line. The purpose of this buffer shall be to protect the quality of public waters by minimizing erosion, preventing siltation and turbidity, stabilizing soils, preventing excess nutrient and chemical pollution, maintaining natural water temperatures, maintaining a healthy tree canopy and understory, preserving fish and wildlife habitat, and respecting the overall natural condition of the protected shoreland.

(2) Within the natural woodland buffer of the protected shoreland under conditions defined in RSA 483-B:9, V, all of the following prohibitions and limitations shall apply:

(A) Not more than a maximum of 50 percent of the basal area of trees, and a maximum of 50 percent of the total number of saplings shall be removed for any purpose in a 20-year period. A healthy, well-distributed stand of trees, saplings, shrubs, ground cover, and their living, undamaged root systems shall be left in place.

(B) Any person applying to the department for a septic system construction approval or alteration of terrain permit pursuant to RSA

485-A, or an excavating and dredging permit pursuant to RSA 482-A, within the protected shoreland shall include photographic documentation of the natural woodland buffer.

(C) Structures, as defined in RSA 483-B:4, XXII, within the natural woodland buffer shall be afforded an opening for building construction that shall be excluded when computing the percentage limitations under subparagraph (a)(2)(A).

(D) Dead, diseased, unsafe, or fallen trees, saplings, shrubs, or ground cover may be removed. Their removal shall not be used in computing the percentage limitations under subparagraph (a)(2)(A).

(E) Stumps and their root systems, which are located within 50 feet of the reference line, shall be left intact in the ground, unless removal is specifically approved by the department under RSA 482-A.

(F) Preservation of dead and living trees that provide dens and nesting places for wildlife is encouraged.

(G) Planting efforts that are beneficial to wildlife are encouraged.

(b) SEPTIC SYSTEMS.

(1) All new lots, including those in excess of 5 acres, created within the protected shoreland are subject to subdivision approval by the department of environmental services under RSA 485-A:29.

(2) The following conditions, based on the characteristics of the receiving soil as they relate to U.S. Department of Agriculture, Natural Resources Conservation Service drainage classes, shall dictate the setback requirements for all new leaching portions of new septic systems, as follows:

(A) Adjacent to ponds, lakes, estuaries, and the open ocean.

(i) Where the receiving soil downgradient of the leaching portions of a septic system is a porous sand and gravel material with a percolation rate equal to or faster than 2 minutes per inch, the setback shall be at least 125 feet from the reference line;

(ii) For soils with restrictive layers within 18 inches of the natural soil surface, the setback shall be at least 100 feet from the reference line; and

(iii) For all other soil conditions, the setback shall be at least 75 feet from the reference line.

(B) Adjacent to rivers the setback shall be no less than 75 feet.

(3) The placement of all septic tanks and leaching portions of septic systems for replacement systems shall comply with the requirements of subparagraph (b)(2), to the maximum extent feasible.

(c) EROSION AND SILTATION.

(1) All new structures, modifications to existing structures, and excavation or earth moving within protected shoreland shall be designed and constructed in accordance with rules adopted by the department under RSA 541-A for terrain alteration under RSA 485-A:17, to manage stormwater and control erosion and sediment, during and after construction.

(2) New structures and all modifications to existing structures within the protected shoreland shall be designed and constructed to prevent the release of surface runoff across exposed mineral soils.

(3) A permit under RSA 485-A:17, I shall be required for improved, developed, or subdivided land whenever there is a contiguous disturbed area exceeding 50,000 square feet that is either partially or wholly within protected shoreland.

(d) MINIMUM LOTS AND RESIDENTIAL DEVELOPMENT. In the protected shoreland:

(1) The minimum size for new lots in areas dependent upon on-site septic systems shall be determined by soil type lot size determinations, as established by the department of environmental services under RSA 485-A and rules adopted to implement it.

(2) For projects in areas dependent upon on-site sewage and septic systems, the total number of residential units in the protected shoreland, whether built on individual lots or grouped as cluster or condominium development, shall not exceed:

(A) One unit per 150 feet of shoreland frontage; or

(B) For any lot that does not have direct frontage, one unit per 150 feet of lot width as measured parallel to the shoreland frontage that lies between the lot and the reference line.

(3) No lot dependent upon an on-site septic system, having frontage on public waters, shall be created with less than 150 feet of shoreland frontage.

(4) Lots in areas serviced by municipal sewers shall conform to municipal minimum lot standards, and shall not be subject to any shoreland frontage requirement, except as provided by municipal standards.

(5) Lots and residential units outside of the protected shoreland shall not be subject to this chapter.

(e) **MINIMUM LOTS AND NON-RESIDENTIAL DEVELOPMENT.** In the protected shoreland:

(1) The minimum size for new non-residential lots in areas dependent upon on-site septic systems shall be determined by soil type lot size determinations, as set forth under rules adopted under RSA 541-A.

(2) Non-residential development requiring on-site water, sewage, and septic systems shall not be constructed on lots less than 150 feet in width.

(3) Non-residential lots in areas serviced by municipal sewers shall conform to municipal minimum lot standards.

(4) Non-residential lots outside of the protected shoreland shall not be subject to this chapter.

(f) **COMMON OWNERS AND RESIDENTIAL OR NON-RESIDENTIAL DEVELOPMENT.** In the protected shoreland, waterfront parcels held in common by one or more owners of contiguous interior parcels may be developed, but only in a manner consistent with the provisions of this chapter. Care shall be taken for the adequate provision of parking, toilet facilities, and related support systems to minimize the project's impact on the public waters.

(g) The commissioner shall have the authority to grant variances from the minimum standards of this section. Such authority shall be exercised subject to the criteria which govern the grant of a variance by a zoning board of adjustment under RSA 674:33, I(b).

10 Nonconforming Structures. RSA 483-B:11 is repealed and reenacted to read as follows:

483-B:11 Nonconforming Structures.

I. Except as otherwise prohibited by law, nonconforming structures, erected prior to July 1, 1994, located within the protected shoreland may be repaired, renovated, or replaced in kind using modern technologies, provided the result is a functionally equivalent use. Such repair or replacement may alter the interior design or existing foundation, but no expansion of the existing footprint or outside dimensions shall be permitted. An expansion that increases the sewerage load to an on-site septic system, or changes or expands the use of a septic system or converts a structure to condominiums or any other project identified under RSA 485-A:29-44 and rules adopted to implement it shall require approval

by the department. Between the primary building line and the reference line, no alteration shall extend the structure closer to the public water, except that the addition of a deck or open porch is permitted up to a maximum of 12 feet towards the reference line.

II. When reviewing requests for the redevelopment of sites that contain nonconforming structures erected prior to July 1, 1994, the commissioner shall review proposals which are more nearly conforming than the existing structures, and may waive some of the standards specified in RSA 483-B:9, so long as there is at least the same degree of protection provided to the public waters. For the purposes of this section, a proposal that is "more nearly conforming" means a proposal for significant changes to the location or size of existing structures that bring the structures into greater conformity, or a proposal for changes to other aspects of the property, including but not limited to stormwater management, wastewater treatment or traffic volume or flow, or both types of proposal which significantly improve wildlife habitat or resource protection.

11 New Section; Permit Required; Exemption Amend RSA 483-B by inserting after section 5-a the following section:

483-B:5-b Permit Required; Exemption.

I.(a) No person shall commence construction, excavation, or filling activities within the protected shoreland without obtaining a permit from the department to ensure compliance with this chapter.

(b) The permit application fee shall be \$100 plus \$.10 per square foot of area affected by the proposed activities and shall be deposited in the wetlands and shorelands review fund established under RSA 482-A:3, III. Such fees shall be capped as follows:

(1) For projects of 0-9,999 square feet, \$750.

(2) For projects of 10,000-24,999 square feet, \$1,875.

(3) For projects of 25,000 square feet or more, \$3,750.

II. Timber harvesting operations permitting requirements shall be in accordance with RSA 485-A:17, IV and therefore shall be exempt from the permitting requirement under paragraph I.

III. Construction of public roads, public utility lines and associated structures and facilities, and public water access facilities shall be exempt from the permitting fees of paragraph I.

IV. Impacts in the protected shoreland that receive a permit in accordance with RSA 482-A shall not require a permit under this section.

V.(a) Within 30 days of receipt of an application for a permit or 75 days of receipt of an application for a permit that will require a variance of the minimum standard of RSA 483-B:9, V or a waiver of the minimum standards of RSA 483-B:9, the department shall request any additional information required to complete its evaluation of the application, and provide the applicant with any written technical comments the department deems necessary. Any request for additional information shall specify that the applicant submit such information as soon as practicable and notify the applicant that if all of the requested information is not received within 60 days of the request, the department shall deny the application.

(b) When the department requests additional information pursuant to subparagraph (a), the department shall, within 30 days of the department's receipt of the information:

(1) Approve the application and issue a permit;

(2) Deny the application, in whole or in part; or

(3) Extend the time for response for good cause and with the written agreement of the applicant.

(c) Where no request for additional information is made, the department shall, within 30 days of receipt of the application for a permit or 75 days of receipt of an application for a permit that will require a variance of the minimum standard of RSA 483-B:9, V or a waiver of the minimum standards of RSA 483-B:9, approve or deny the application, in whole or in part.

(d) If the department fails to render a decision in the time frame provided in this paragraph, the application shall be deemed to be approved and a permit shall be issued.

12 New Paragraph; Definitions. Amend RSA 483-B:4 by inserting after paragraph VII-a the following new paragraph:

VII-b. "Impervious surface" means any modified surface that cannot effectively absorb or infiltrate water. Examples of impervious surfaces include, but are not limited to, roofs, decks, patios, and paved, gravel, or crushed stone driveways, parking areas, and walkways unless designed to effectively absorb or infiltrate water.

13 New Paragraph; Definitions. Amend RSA 483-B:4 by inserting after paragraph X-a the following new paragraph:

X-b. "Natural ground cover" means any herbaceous plant or any woody seedling or shrub generally less than 3 feet in height. Natural ground cover shall also include naturally occurring leaf or needle litter, stumps, decaying woody debris, stones, and boulders. Natural ground cover shall not include lawns, invasive species as listed by the department of agriculture, markets, and food in accordance with RSA 430:53, III, exotic species as designated by rule of the department of environmental services in accordance with RSA 487:24, VII, imported organic or stone mulches, or other artificial materials.

14 Definitions. RSA 483-B:4, XI-c is repealed and reenacted to read as follows:

XI-c. "Nonconforming lot of record" means an existing lot which does not conform to the provisions of this chapter.

XI-d. "Nonconforming structure" means a structure that, either individually or when viewed in combination with other structures on the property, does not conform to the provisions of this chapter, including but not limited to the impervious surface limits of RSA 483-B:9, V(g).

XI-e. "Ordinary high water mark" means the line on the shore, running parallel to the main stem of the river, established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the immediate bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas. Where the ordinary high water mark is not easily discernable, the ordinary high water mark may be determined by the department of environmental services.

15 Definitions. RSA 483-B:4, XVI(c) is repealed and reenacted to read as follows:

(c) Rivers, meaning all year-round flowing waters of fourth order or higher and all rivers and river segments designated as protected under RSA 483:15. Stream order shall be determined using the New Hampshire hydrography dataset archived by the geographically referenced analysis and information transfer system (GRANIT) at the complex systems research center of the university of New Hampshire, and developed by GRANIT in collaboration with the department of environmental services. A listing of the streams of fourth order and higher shall be prepared and

periodically updated by the GRANIT at the complex systems research center of the university of New Hampshire and delivered to the commissioner 30 days after the effective date of this section.

16 New Paragraph; Definitions. Amend RSA 483-B:4 by inserting after paragraph XXIV-a the following new paragraph:

XXIV-b. "Undisturbed state" means native vegetation allowed to grow without interference.

17 Definitions. RSA 483-B:4, XXVI is repealed and reenacted to read as follows:

XXVI. "Water dependent structure" means a structure that is a dock, wharf, pier, breakwater, beach, boathouse, retaining wall, or launching ramp or other similar structure, or any part thereof, built over, on, or in the waters of the state.

18 Other Required Permits and Approvals. RSA 483-B:6 is repealed and reenacted to read as follows:

483-B:6 Other Required Permits and Approvals.

I. Within the protected shoreland, any person intending to:

(a) Engage in any earth excavation activity shall obtain all necessary local approvals in compliance with RSA 155-E.

(b) Construct a water-dependent structure, alter the bank, or construct or replenish a beach shall obtain approval and all necessary permits pursuant to RSA 482-A.

(c) Install a septic system as described in RSA 483-B:9, V(c) shall obtain all permits pursuant to RSA 485-A:29.

(d) Conduct an activity resulting in a contiguous disturbed area exceeding 50,000 square feet shall obtain a permit pursuant to RSA 485-A:17.

(e) Subdivide land as described in RSA 483-B:9, V(e) and (f) shall obtain approval pursuant to RSA 485-A:29.

(f) Conduct an activity regulated under a local zoning ordinance shall obtain all necessary local approvals.

II. In applying for approvals and permits, pursuant to paragraph I, applicants shall demonstrate that the proposal meets or exceeds the development standards of this chapter. The department shall develop minimum standards for information to be required on or with all applications under paragraph I. The department or municipality shall grant, deny, or attach reasonable conditions to approvals or permits listed in subparagraphs I(a)-(f), to protect the public waters or the public health, safety or welfare. Such conditions shall be related to the purposes of this chapter.

III. The commissioner shall have the sole authority to issue variances and waivers of the provisions of this chapter as specifically authorized by this chapter.

IV. No variance, permit, or approval issued by a municipality shall exempt the owner from obtaining any other necessary permit or approval from the department as required by this chapter.

19 Minimum Shoreland Protection Standards. RSA 483-B:9, IV-b is repealed and reenacted to read as follows:

IV-b. Public utility lines and associated structures and facilities, public roads, and public water access facilities including boat ramps shall be permitted by the commissioner as necessary and consistent with the purposes of this chapter and other state law.

20 Waterfront Buffer. RSA 483-B:9, V is repealed and reenacted to read as follows:

V. The following minimum standards shall apply to areas and activities within the protected shoreland with the exception of forest management that is not associated with shoreland development or land conver-

sion, and is conducted in compliance with RSA 227-J:9; forestry conducted by or under the direction of a water supplier for the purpose of managing a water supply watershed; and agriculture conducted in accordance with best management practices as required by RSA 483-B:3, III:

(a) MAINTENANCE OF A WATERFRONT BUFFER.

(1) The waterfront buffer shall be those protected shorelands within 50 feet of the reference line. The purpose of this buffer shall be to protect the quality of public waters while allowing homeowner discretion with regard to water access, safety, viewscape maintenance, and lot design.

(2) Within the waterfront buffer all of the following prohibitions and limitations shall apply:

(A) No chemicals, including pesticides of any kind or fertilizers of any kind except those specified in RSA 483-B:9, II(d), shall be applied.

(B) Rocks and stumps and their root systems shall be left intact in the ground unless removal is specifically approved by the department, pursuant to RSA 482-A or RSA 483-B:11, II.

(C) No natural ground cover shall be removed except as necessary for a foot path to water as provided under RSA 483-B:9, V(a)(2) (D)(viii), cutting those portions that have grown over 3 feet in height for the purpose of providing a view, or as specifically approved by the department, pursuant to RSA 482-A or 483-B:11, II.

(D) Starting from the northerly or easterly boundary of the property, and working along the shoreline, the waterfront buffer shall be divided into 50 by 50 foot segments. Within each segment a minimum combined tree and sapling score of at least 50 points shall be maintained. If for any reason there is insufficient area for a full segment, the number of points required to be maintained in that partial segment shall be proportional to that required of a full segment.

(i) Tree and sapling diameters shall be measured at 4 1/2 feet above the ground and are scored as follows:

Diameter	Score
1 inch to 6 inches	1
greater than 6 inches to 12 inches	5
greater than 12 inches	10

(ii) Dead, diseased, or unsafe trees or saplings shall not be included in scoring.

(iii) If the total tree and sapling score in any 50 foot by 50 foot segment exceeds 50 points, then trees and saplings may be removed as long as the sum of the scores for the remaining trees and saplings in that segment does not total less than 50 points. Trees and saplings may be removed from partial segments provided that the sum of the scores for the remaining trees and saplings in that partial segment is equal to or greater than the proportional point requirement.

(iv) The department may approve applications pursuant to RSA 482-A that include the planting of native trees and saplings as necessary to at least maintain either the existing combined tree and sapling score or the minimum score required. The department shall not approve any application that would result in a combined tree and sapling score less than the minimum score required where the segment initially meets the minimum score or would result in any reduction of the combined tree and sapling score where the segment does not initially meet the minimum score.

(v) Owners of lots that were legally developed prior to April 1, 2008 may maintain but not enlarge cleared areas, including but not limited to existing lawns and beaches, within the waterfront buffer. Conversion to

or planting of cleared areas with native species of ground cover, shrubs, saplings, and trees is encouraged but shall not be required unless it is necessary to meet the requirements of subparagraphs (g)(2) or (g)(3), or RSA 483-B:11, II.

(vi) Normal trimming, pruning, and thinning of branches to the extent necessary to protect structures, maintain clearances, and provide views is permitted. Trimming, pruning, and thinning of branches for the purpose of providing views shall be limited to the bottom 1/2 of the trees or saplings.

(vii) When necessary for the completion of construction activities permitted in accordance with RSA 483-B:6, a temporary 12 foot wide access path shall be allowed. The access path shall be completely restored and replanted with native vegetation upon completion of construction except as allowed under subparagraph (viii).

(viii) A permanent 6-foot wide foot path to the water body, configured in a manner that will not concentrate storm water runoff or contribute to erosion, is allowed.

(b) MAINTENANCE OF A NATURAL WOODLAND BUFFER.

(1) A natural woodland buffer shall be maintained within 150 feet of the reference line. The first 50 feet of this buffer is designated the waterfront buffer and is subject to the additional requirements of subparagraph (a). The purpose of the natural woodland buffer shall be to protect the quality of public waters by minimizing erosion, preventing siltation and turbidity, stabilizing soils, preventing excess nutrient and chemical pollution, maintaining natural water temperatures, maintaining a healthy tree canopy and understory, preserving fish and wildlife habitat, and respecting the overall natural condition of the protected shoreland.

(2) Within the natural woodland buffer of a given lot:

(A) At least 50 percent of the area outside of impervious surfaces shall be maintained in an undisturbed state. Owners of lots legally developed prior to April 1, 2008 that do not comply with this standard are encouraged to, but shall not be required to, increase the percentage of area maintained in an undisturbed state, except as required by the department under RSA 483-B:11, II. The percentage of area maintained in an undisturbed state on nonconforming lots shall not be decreased.

(B) Any person applying to the department for a septic system construction approval or alteration of terrain permit pursuant to RSA 485-A, or an excavating and dredging permit pursuant to RSA 482-A, within the protected shoreland shall include photographic documentation of the natural woodland buffer.

(C) Dead, diseased, or unsafe, trees, saplings, or shrubs that pose an imminent hazard to structures or have the potential to cause personal injury may be removed regardless of any requirements that pertain to the natural woodland buffer under this chapter. Such exemptions shall not be used to contravene the intent of the law.

(D) Preservation of dead and living trees that provide dens and nesting places for wildlife is encouraged.

(E) Native species planting efforts that are beneficial to wildlife are encouraged.

(c) SEPTIC SYSTEMS.

(1) The subdivision of a parcel of land shall be subject to subdivision approval by the department of environmental services under RSA 485-A:29 if any portion of the land to be subdivided is within the protected shoreland.

(2) The following conditions, based on the characteristics of the receiving soil as they relate to U.S. Department of Agriculture, Natural

Resources Conservation Service drainage classes, shall dictate the setback requirements for all new leaching portions of new septic systems, as follows:

(A) Adjacent to ponds, lakes, estuaries, and the open ocean.

(i) Where the receiving soil downgradient of the leaching portions of a septic system is a porous sand and gravel material with a percolation rate equal to or faster than 2 minutes per inch, the setback shall be at least 125 feet from the reference line;

(ii) For soils with restrictive layers within 18 inches of the natural soil surface, the setback shall be at least 100 feet from the reference line; and

(iii) For all other soil conditions, the setback shall be at least 75 feet from the reference line.

(B) Adjacent to rivers the setback shall be no less than 75 feet.

(3) The placement of all septic tanks and leaching portions of septic systems for replacement systems shall comply with the requirements of subparagraph (c)(2), to the maximum extent feasible.

(d) EROSION AND SILTATION.

(1) All new structures, modifications to existing structures, and excavation or earth moving within protected shoreland shall be designed and constructed in accordance with rules adopted by the department under RSA 541-A for terrain alteration under RSA 485-A:17, to manage storm-water and control erosion and sediment, during and after construction.

(2) New structures and all modifications to existing structures within the protected shoreland shall be designed and constructed to prevent the release of surface runoff across exposed mineral soils.

(3) A permit under RSA 485-A:17, I shall be required for improved, developed, or subdivided land whenever there is a contiguous disturbed area exceeding 50,000 square feet that is either partially or wholly within protected shoreland.

(e) MINIMUM LOTS AND RESIDENTIAL DEVELOPMENT. In the protected shoreland:

(1) The minimum size for new lots in areas dependent upon on-site septic systems shall be determined by soil type lot size determinations, as established by the department of environmental services under RSA 485-A and rules adopted to implement it.

(2) For projects in areas dependent upon on-site sewage and septic systems, the total number of residential units in the protected shoreland, whether built on individual lots or grouped as cluster or condominium development, shall not exceed:

(A) One unit per 150 feet of shoreland frontage; or

(B) For any lot that does not have direct frontage, one unit per 150 feet of lot width as measured parallel to the shoreland frontage that lies between the lot and the reference line.

(3) No lot having frontage on public waters, shall be created with less than 150 feet of shoreland frontage.

(4) Lots and residential units outside of the protected shoreland shall not be subject to this chapter.

(f) MINIMUM LOTS AND NON-RESIDENTIAL DEVELOPMENT. In the protected shoreland:

(1) The minimum size for new non-residential lots in areas dependent upon on-site septic systems shall be determined by soil type lot size determinations, as set forth under rules adopted under RSA 541-A.

(2) No lot having frontage on public water shall be created with less than 150 feet of shoreland frontage.

(3) Non-residential lots outside of the protected shoreland shall not be subject to this chapter.

(g) IMPERVIOUS SURFACES.

(1) No more than 20 percent of the area of a lot located within the protected shoreland shall be composed of impervious surfaces, except as provided in subparagraphs (2) and (3).

(2) The impervious surface area shall not exceed 25 percent provided that in the waterfront buffer, in addition to any other provisions that apply to such area under this chapter, no trees or saplings shall be removed as provided for in RSA 483-B:9, V(a)(2)(D)(iii) and such restriction is recorded in the chain of title for the property. In addition, if the natural tree and sapling cover in the waterfront buffer does not meet the 50-point minimum score of RSA 483-B:9, V(a)(2)(D) in any segment, then such segment shall be planted, as determined by rule of the department, with native trees, saplings, or natural ground cover in sufficient quantity, type, and location either to meet the minimum score or to provide at least an equivalent level of protection as offered by the minimum score.

(3) The impervious surface area shall not exceed 30 percent provided the conditions of subparagraph (2) are satisfied and a stormwater management system designed to ensure that post-development total runoff volume shall not exceed the pre-development total runoff volume, and approved by the department, shall be implemented and maintained.

(4) Property owners and developers are encouraged to seek creative solutions that utilize low impact development techniques.

(h) COMMON OWNERS AND RESIDENTIAL OR NON-RESIDENTIAL DEVELOPMENT. In the protected shoreland, waterfront parcels held in common by one or more owners of contiguous interior parcels may be developed, but only in a manner consistent with the provisions of this chapter. Care shall be taken for the adequate provision of parking, toilet facilities, and related support systems to minimize the project's impact on the public waters.

(i) The commissioner shall have the authority to grant variances from the minimum standards of this section. Such authority shall be exercised subject to the criteria which govern the grant of a variance by a zoning board of adjustment under RSA 674:33, I(b).

21 Nonconforming Structures. RSA 483-B:11 is repealed and reenacted to read as follows:

483-B:11 Nonconforming Structures.

I. Except as otherwise prohibited by law, nonconforming structures located within the protected shoreland may be repaired, renovated, or replaced in kind using modern technologies, provided the result is a functionally equivalent use. Such repair or replacement may alter the interior design or existing foundation, but shall result in no expansion of the existing footprint except as authorized by the department pursuant to paragraph II. An expansion that increases the sewerage load to an on-site septic system, or changes or expands the use of a septic system or converts a structure to condominiums or any other project identified under RSA 485-A:29-44 and rules adopted to implement it shall require approval by the department. Between the primary building line and the reference line, no alteration shall extend the structure closer to the public water, except that the addition of a deck or open porch is permitted up to a maximum of 12 feet towards the reference line for nonconforming structures erected prior to July 1, 1994.

II. When reviewing requests for the redevelopment of sites that contain nonconforming structures or any expansions of nonconforming structures

the commissioner shall review proposals which are more nearly conforming than the existing structures, and may waive some of the standards specified in RSA 483-B:9, so long as there is at least the same degree of protection provided to the public waters. For the purposes of this section, a proposal that is "more nearly conforming" means a proposal for significant changes to the location or size of existing structures that bring the structures into greater conformity, or a proposal for changes to other aspects of the property, including but not limited to stormwater management, wastewater treatment or traffic volume or flow, or both types of proposal which significantly improve wildlife habitat or resource protection.

22 Repeal. The following are repealed:

I. RSA 483-B:5-b, I(b), relative to permit application fees.

II. RSA 483-B:5-b, III, relative to exemptions from permit application fees.

23 Effective Date.

I. Paragraph II of section 4 of this act shall take effect April 1, 2008 at 12:02 a.m.

II. Paragraphs I and III-VI of section 4 and sections 5-10 of this act shall take effect April 1, 2008 at 12:01 a.m.

III. Section 22 of this act shall take effect July 1, 2011.

IV. The remainder of this act shall take effect October 1, 2008.

2008-1125s

AMENDED ANALYSIS

This bill extends the reporting dates for the instream flow pilot program.

This bill also changes the effective date for certain provisions of 2007, 267 and 2007, 269, relating to the comprehensive shoreland protection act, from April 1, 2008 to October 1, 2008.

SENATOR FULLER CLARK: Thank you very much, Madam President. I would now like to take the opportunity to reintroduce Floor Amendment 1125s.

PRESIDENT LARSEN: Floor Amendment 1125s has been proposed. Is there any discussion on the amendment? You would like to speak that floor amendment?

SENATOR FULLER CLARK: Yes. I just want to clarify that this amendment does extend the implementation date out till October 1st, and because we do not have the opportunity for the concurrence of the House until after April 1st, it also goes through the process that was explained to you earlier about repealing and reinstating the legislation. Thank you. (The Chair recognized Sen. Kenney to speak.)

SENATOR KENNEY: Thank you, Madam President. I want to say that I support changing the implementation date to October 1st. One of the biggest concerns that I have, in speaking to the Department of Environmental Services, particularly Rene Pelletier, is that while we take action today, and while we wait on the House action on April 16th, that the looming deadline of April 1st, which is current law, when it comes to the implementation of the Shoreline [sic] Protection Act and all its provisions will take place. And the concern that I have is for my builders in my district who will say: What am I going to do, Sen. Kenney, between April 1st and April 16th, and when the Governor indeed signs this into law so that it is enacted into law? Because it is my understanding, is that they

have certain requirements to meet before that April 1st deadline, which is looming and is right around the corner. Specifically, they need to put in foundation requirements, they need to make sure that their permit is far along enough so that they can meet the April 1st deadline. There is thousands of applications at DES at this juncture. And it is again my concern that the builders are not going to be able to meet some of those requirements before April 1st, and this Legislature, between April 1st and whatever time in April, May or June, when that law is enacted and repealed, there is doubt in the building community around the state, and particularly on the lakes, as we heard from testimony last year, that most of the building in the State of New Hampshire is occurring along the lakes. And so I want to be able to, Sen. Clark, and to the members of this body, to go back to my building community, which is around the lakes of New Hampshire, in Senate District 3, and be able to give them an answer, an answer that says: What do we do between April 1st and April 16th or beyond, when it comes to the implementation date. And I think that's what I want to come out of Concord here today with an answer for my builders so that I know that when I speak to them I'm giving them accurate information, the information that they want to hear. Otherwise, they're going to continue to call me and say: What's going on with the implementation date? When can I look beyond April 1st and look to October 1st, or to look to July 1st. But I understand that that floor amendment was defeated, so we're looking at an October 1st deadline with this bill. Madam President, this is a very serious matter in my district. These are people that put their livelihoods every day on the line with building homes, and they need to know exactly how to plan on building these homes for new homeowners. Thank you, Madam President.

(The Chair recognized Sen. Hassan to speak.)

SENATOR HASSAN: Thank you, Madam President. Indeed the Energy, Environment and Economic Development Committee did begin to hear from the building community about concerns, about the delay in the adoption of rules to enforce the Shoreland Protection Act, and as a result working with DES with both those who are advocating for the Shoreland Protection Act to protect our lakes, as well as with the building community. We came up with a recommendation today, that this Senate I think is about to enact, to extend the deadline to October 1st. We have confirmed with the Commissioner, who is the chief executive officer of the Department, that there is no intention to enforce an April 1st deadline. Because we have been working with the Department, they understand this body's intent, and we have also been working with the House moving forward to try to expedite an extension of the deadline. So I think we've done the best we can as a Legislature working with our Executive Branch to be constructive about this, and we have confirmed with the Commissioner and his office as early as – as most recently as this morning, that they do not intend to enforce this in the interim period. Thank you.

(The Chair recognized Sen. Gatsas for a question of Sen. Hassan.)

SENATOR GATSAS: Sen. Hassan, is there a reason why he hasn't notified all 24 Senators in here in regards to his action? And, two – I have a follow-up question?

PRESIDENT LARSEN: Follow-up question.

SENATOR GATSAS: Well, no, first I'd like the answer, why he didn't tell everybody.

SENATOR HASSAN: I don't – we'd called and asked him, he told us. So, and I'm sure he would respond to any Senator who called him. And I'm happy to – and we can have him, you know, get a letter, that's fine.

SENATOR GATSAS: Follow-up. Do we think that the Executive Branch should have any right to not enforce the laws that we pass in this Legislature, at whatever time they presume is right or wrong?

SENATOR HASSAN: I think we expect that the state government of New Hampshire, through its three branches, can work collaboratively together in the best interest of the citizens of this state, which includes the building community, shoreland owners, and those who care about the quality of our environment and our water. And I think we are working collaboratively to do that, and when there is not a perfect solution at hand, we do our best, and we do it with the best intentions, and we do it in a way that protects all of us. And I think this solution will do that.

SENATOR GATSAS: Then if the Executive Branch was going to take control of this situation, why do we need this legislation?

SENATOR HASSAN: I am happy to debate with your esoteric questions about the way three branches of government can or cannot work together. I'm more interested in helping the people of this state, including the people who work and own property on our shorelands. Thank you.

(The Chair recognized Sen. Fuller Clark to speak.)

SENATOR FULLER CLARK: I'd simply like to further address the question that Sen. Gatsas asked, which was, we were advised that it was important to go in both directions; that we get a commitment from the Commissioner, but at the same time we deal with this legislatively, and that's why this bill is before you. Thank you.

The question is on the adoption of Floor Amendment 1125s.

Floor Amendment 1125s adopted.

The following Senators asserted Rule 42 on HB 1151: Burling, Estabrook, Gottesman and Reynolds.

The question is on the adoption of Ought to Pass as Amended on HB 1151.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

The following Senators asserted Rule 42 on HB 1151: Burling, Estabrook, Gottesman and Reynolds.

Senators Clegg, Downing, Gatsas and Kenney are in opposition to Committee Amendment 1057s on HB 1151.

Sen. Gatsas is in favor of HB 1151.

(The Chair recognized Sen. D'Allesandro to speak.)

SENATOR D'ALLESANDRO (Rule 44): Thank you, Madam President. Madam President, I know that we weren't here to celebrate Greek Independence Day, but in deference to my colleague, Sen. Gatsas –

SENATOR GATSAS: Boy, I can feel the love. (Laughter)

SENATOR D'ALLESANDRO: The love permeates this environment. I want to wish him and all of his brothers and sisters a very happy Greek Independence Day. It's a day that we celebrate here in New Hampshire

because of the marvelous contributions made by Greek Americans, and we certainly appreciate that, and we appreciate Sen. Gatsas' contributions to the Senate. Thank you. Thank you, Madam President.

PRESIDENT LARSEN: We extend happy greetings to all those of Greek ... and others who celebrate this day

MOTION TO REMOVE FROM THE TABLE

Sen. Hassan moved to have HB 185-FN removed from the table. Motion adopted.

HB 185-FN, relative to economic revitalization zone credits.

The question is on the adoption of committee recommendation of Ought to Pass.

Motion of Ought to Pass adopted, bill ordered to Committee on Finance (Rule 26).

RESOLUTION

Sen. Foster moved that the Senate adjourn from the Early Session, that the business of the Late Session be in order at the present time, that all bills and resolutions ordered to Third Reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

Motion to adjourn adopted.

Adjournment from the Early Session.

LATE SESSION

Third Reading and Final Passage

HB 291, relative to licensure of fireworks sellers.

HB 385-FN, relative to licensing and insurance fees.

HB 717, allowing municipalities to establish local community services and care planning boards.

HB 794-FN, establishing a commission to study the feasibility of public funding of state election campaigns.

HB 1151, relative to reporting dates for the instream flow pilot program.

HB 1152-FN, relative to interpreting statutory deadlines.

HB 1166, relative to rate setting for interpreters for the deaf and hard of hearing.

HB 1172-FN, changing the name of the pari-mutuel commission to the racing and charitable gaming commission.

HB 1230, requiring pharmacists to charge an insured person the usual and customary price or the copayment, whichever is less, of filling a prescription.

HB 1266, allowing 50 caliber pistols to take game animals in the state.

HB 1277, relative to the definition of farm.

HB 1295, establishing a commission to study issues relating to storm-water.

HB 1384, relative to the regulation of designated agents by the New Hampshire real estate commission, and relative to the disclosure of certain property conditions.

HB 1411, relative to rulemaking under the native plant protection act.

HJR 10, urging congress to allow for the interstate sale of state inspected meat and poultry.

HJR 11, requesting the United States Department of Agriculture to provide redress for price reporting errors in milk prices.

HJR 12, relative to support for research into colony collapse disorder.

ANNOUNCEMENTS

SENATOR BARNES (Rule 44): Thank you, Madam President. I rise to give some sad news to my colleagues. We had a Representative pass away yesterday. Some of you may have know him, some of you may have not. Since September of last year he's been laying unconscious up in the Epsom Manor, a very bad situation, and the Lord finally came through and put him together with his wife. I'm talking about Rep. Robert Forsing, who was the Governor's appointee over the years on the aging issue. He and his wife were very involved with the AARP. Bob was on Election Laws in the House. I'm the guy that got him interested and asked him to run, he's from Raymond. And he was also the father of our 12-year revival of our July 4th Parade in Raymond; he and his wife were very instrumental in getting that started up again. Last night I called the Speaker, and I called the chairman of the committee that he sat on, to let them know about it. It probably isn't in the paper today, I haven't read the obituaries, I usually try not to; afraid I might see a name I recognize. But I do want to recognize the fact that he was a good man, and the committee chairman was very sad to hear that news about his passing. He was another good public servant that has passed away, but the good news is he's probably with his beloved wife who passed away several years ago. Thank you.

PRESIDENT LARSEN: Thank you. Those of us who worked with Rep. Forsing remember him as being a decent and hard-working man and a man who stood up for issues related to aging and the AARP. So his passing is noted with sadness.

(The Chair recognized Sen. Gallus to speak.)

SENATOR GALLUS (Rule 44): Thank you, Madam President. Sadly, I rise to report that Sgt. David Stelmat, 27 of Bethlehem, a combat medic with the New Hampshire National Guard, was killed in action this week in Iraq. Sgt. Stelmat is the third New Hampshire National Guard soldier killed in the line of duty. I ask you to remember Sgt. Stelmat and his family in your prayers. A memorial service will be held at noon, Monday, at the New Life Assembly of God Church on the Whitefield Road, on the Bethlehem-Littleton town line. I thank you.

(The Chair recognized Sen. Letourneau to speak.)

SENATOR LETOURNEAU (Rule 44): A Rule 44, Madam President. On Saturday the Gold Star Mothers, which is Gold Star Mothers' Day is being recognized, and in Manchester they're going to be dedicating the Gold Star Mothers' monument, and I don't think it's built yet, but they're going to be doing a dedication ceremony there in Manchester on Saturday, and I would – Sunday, I'm sorry, Sunday. And so I would urge any Senators that are in the vicinity, if they would like to attend that, that they could go to Manchester and attend that.

PRESIDENT LARSEN: Could you send information to the Senators regarding those specifics?

SENATOR LETOURNEAU: I can make sure that that happens.

SENATOR BARNES: I can give you that information right now. It's 9 o'clock on Sunday morning at the Radisson Hotel. The ceremony will be approximately 10 o'clock across the street at that park where the monument is going to be erected. So 9 a.m., we'll see all of you there. Thank you.

President Larsen moved, without objection, all Rule 44's are to be entered into the permanent record.

RESOLUTION

Sen. Foster moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, referring bills to committees, scheduling hearings, sending and receiving messages, and processing enrolled bill reports and amendments.

Motion to recess adopted.

The Senate is in recess to the Call of the Chair.

HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

HB 781-FN, relative to the duties of the department of safety.

HB 1197, relative to liquor advertising.

HB 1202, relative to monitoring privately owned water distribution programs.

HB 1237, establishing a committee to study liquor advertising by the liquor commission.

HB 1242, relative to the prohibition on employee consumption of beverage or liquor.

HB 1286-FN, relative to the licensing of mortgage bankers, mortgage brokers, and mortgage originators.

HB 1333, relative to post-foreclosure eviction actions.

HB 1345, establishing a commission to study vehicle dealer licenses, dealer plates, and temporary plates.

HB 1348, relative to the milk producers emergency relief fund.

HB 1349, relative to membership on the council on resources and development.

HB 1378, relative to insurance taxes and fees.

HB 1395-FN, establishing the AIDS drug assistance program fund.

HB 1396-FN, relative to requiring prescriptions to be ordered pursuant to a practitioner-patient relationship.

HB 1420, relative to the applicability of zoning ordinances to auto salvage yards.

HB 1426-FN-A, relative to motor fuel import fees.

HB 1434, relative to the regional greenhouse gas initiative and authorizing cap-and-trade programs for controlling carbon dioxide emissions.

HB 1435, requiring certain food programs to comply with Centers for Disease Control/Institute of Medicine standards.

HB 1436, relative to requiring inclusion of an automatic continuation clause in collectively bargained agreements with public employees.

HB 1437, establishing a committee to study whether the state of New Hampshire shall establish a policy that victims of negligent or intentional tortious acts shall recover losses incurred as a result of such acts.

HB 1441-L, relative to use of the terms "selectwoman" and "select-person."

HB 1447-FN, relative to Medicaid for employed adults with disabilities.

HB 1458, relative to milk producers and hauling and stop charges.

HB 1472, relative to workforce housing.

HB 1477, relative to cellular phone and satellite television records for child support enforcement.

HB 1479-FN, relative to the sale of tobacco products and the appeals process concerning the seizure of illegal tobacco products.

HB 1480, authorizing the commissioner of revenue administration to deny certain tobacco licenses.

HB 1487, establishing a committee to study practice by advanced dental hygiene practitioners and ways to increase access to oral health care.

HB 1492, relative to prescriptions under the controlled drug act.

HB 1496-FN, establishing motor vehicle learners' permits and relative to youth operators' licenses.

HB 1502-FN, relative to disposal of used needles.

HB 1505-FN, establishing the New Hampshire birth conditions program.

HB 1508-FN, relative to prohibited influence of voters and persons intending to vote and relative to the applicability of political advertising and push polling restrictions.

HB 1513-FN, relative to an evidence-based prescription drug education program.

HB 1520-FN, allowing service in the Peace Corps to be purchased as creditable service in the retirement system.

HB 1533, relative to the office of the state treasurer.

HB 1536, relative to periodic payments of judgments.

HB 1537, relative to the definition of milk.

HB 1538, relative to mineral extraction, mining, and reclamation in New Hampshire.

HB 1554-FN, relative to challenges of voters.

HB 1563-FN, authorizing public academies to receive public funds for renovation and expansion of regional vocational education programs.

HB 1569-FN, relative to the use of drugs on wildlife.

HB 1573-FN-L, relative to hazardous and dilapidated buildings.

HB 1576-FN, relative to the employment of veterans on Veterans' Day.

HB 1578-FN, relative to insurance fraud.

HB 1581-FN-L, relative to the formation of stormwater utility districts.

HB 1583-FN, requiring the bureau of emergency communications to develop and maintain a statewide emergency notification system.

HB 1591-FN, relative to vehicles traded to automobile dealers.

HB 1594-FN, relative to hazardous material reporting requirements and establishing fees for hazardous materials facilities and employees.

HB 1595-FN, relative to driver's license renewals by persons engaged in overseas government service.

HB 1601-FN-A, relative to funding for certain capital projects of the Pease development authority.

HB 1613-FN, making changes to certain statutes relating to crimes against children.

HB 1615-FN-A, establishing the state office of rural health in the department of health and human services and establishing a commission to recommend policies and programs to increase the number of persons in health professions servicing New Hampshire's rural and underserved areas.

HB 1619-FN, requiring a report of the number of female inmates incarcerated in a state correctional facility receiving sex offender treatment.

HB 1623-FN, relative to the penalty for possession of marijuana.

HB 1628, relative to renewable energy generation incentive programs.

HB 1631-FN, relative to the state purchase of biodiesel fuels.

HB 1633-FN, relative to the regulation of licensed alcohol and drug use counselors.

HB 1634, establishing the New Hampshire council on autism spectrum disorders.

HB 1635-FN, relative to permits for motor vehicle salvage facilities and motor vehicle crushers.

HB 1636, relative to automotive recycling.

HB 1637, relative to reports to the cancer registry.

HB 1640-FN, relative to the classification of convicted sex offenders and offenders against children and revising the provisions requiring DNA testing of criminal offenders.

HB 1641-FN, relative to collections and refunds of road tolls.

HB 1645-FN-L, relative to administration of the New Hampshire retirement system and benefits for members.

HB 1647-FN-A, relative to demand response program revenue.

HB 1648-FN, relative to search and rescue response expenses of the fish and game department.

HB 1652-FN-A, relative to the state obligation for payment of the non-federal share of FEMA public assistance and making an appropriation therefor.

INTRODUCTION OF HOUSE BILL(S)

Sen. Foster offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, House legislation numbered from **HB 781 to 1652**, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

Resolution adopted.

First and Second Reading and Referral

HB 781-FN, relative to the duties of the department of safety. (Transportation and Interstate Cooperation)

HB 1197, relative to liquor advertising. (Commerce, Labor and Consumer Protection)

HB 1202, relative to monitoring privately owned water distribution programs. (Energy, Environment and Economic Development)

HB 1237, establishing a committee to study liquor advertising by the liquor commission. (Commerce, Labor and Consumer Protection)

HB 1242, relative to the prohibition on employee consumption of beverage or liquor. (Commerce, Labor and Consumer Protection)

HB 1286-FN, relative to the licensing of mortgage bankers, mortgage brokers, and mortgage originators. (Commerce, Labor and Consumer Protection)

HB 1333, relative to post-foreclosure eviction actions. (Judiciary)

HB 1345, establishing a commission to study vehicle dealer licenses, dealer plates, and temporary plates. (Transportation and Interstate Cooperation)

HB 1348, relative to the milk producers emergency relief fund. (Wildlife, Fish and Game and Agriculture)

HB 1349, relative to membership on the council on resources and development. (Energy, Environment and Economic Development)

HB 1378, relative to insurance taxes and fees. (Commerce, Labor and Consumer Protection)

HB 1395-FN, establishing the AIDS drug assistance program fund. (Health and Human Services)

HB 1396-FN, relative to requiring prescriptions to be ordered pursuant to a practitioner-patient relationship. (Health and Human Services)

HB 1420, relative to the applicability of zoning ordinances to auto salvage yards. (Public and Municipal Affairs)

HB 1426-FN-A, relative to motor fuel import fees. (Ways and Means)

HB 1434, relative to the regional greenhouse gas initiative and authorizing cap-and-trade programs for controlling carbon dioxide emissions. (Energy, Environment and Economic Development)

HB 1435, requiring certain food programs to comply with Centers for Disease Control/Institute of Medicine standards. (Health and Human Services)

HB 1436, relative to requiring inclusion of an automatic continuation clause in collectively bargained agreements with public employees. (Commerce, Labor and Consumer Protection)

HB 1437, establishing a committee to study whether the state of New Hampshire shall establish a policy that victims of negligent or intentional tortious acts shall recover losses incurred as a result of such acts. (Judiciary)

HB 1441-L, relative to use of the terms "selectwoman" and "selectperson." (Public and Municipal Affairs)

HB 1447-FN, relative to Medicaid for employed adults with disabilities. (Health and Human Services)

HB 1458, relative to milk producers and hauling and stop charges. (Wildlife, Fish and Game and Agriculture)

HB 1472, relative to workforce housing. (Public and Municipal Affairs)

HB 1477, relative to cellular phone and satellite television records for child support enforcement. (Judiciary)

HB 1479-FN, relative to the sale of tobacco products and the appeals process concerning the seizure of illegal tobacco products. (Ways and Means)

HB 1480, authorizing the commissioner of revenue administration to deny certain tobacco licenses. (Ways and Means)

HB 1487, establishing a committee to study practice by advanced dental hygiene practitioners and ways to increase access to oral health care. (Health and Human Services)

HB 1492, relative to prescriptions under the controlled drug act. (Health and Human Services)

HB 1496-FN, establishing motor vehicle learners' permits and relative to youth operators' licenses. (Transportation and Interstate Cooperation)

HB 1502-FN, relative to disposal of used needles. (Health and Human Services)

HB 1505-FN, establishing the New Hampshire birth conditions program. (Health and Human Services)

HB 1508-FN, relative to prohibited influence of voters and persons intending to vote and relative to the applicability of political advertising and push polling restrictions. (Election Law and Internal Affairs)

HB 1513-FN, relative to an evidence-based prescription drug education program. (Health and Human Services)

HB 1520-FN, allowing service in the Peace Corps to be purchased as creditable service in the retirement system. (Executive Departments and Administration)

HB 1533, relative to the office of the state treasurer. (Finance)

HB 1536, relative to periodic payments of judgments. (Judiciary)

HB 1537, relative to the definition of milk. (Wildlife, Fish and Game and Agriculture)

HB 1538, relative to mineral extraction, mining, and reclamation in New Hampshire. (Energy, Environment and Economic Development)

HB 1554-FN, relative to challenges of voters. (Election Law and Internal Affairs)

HB 1563-FN, authorizing public academies to receive public funds for renovation and expansion of regional vocational education programs. (Education)

HB 1569-FN, relative to the use of drugs on wildlife. (Wildlife, Fish and Game and Agriculture)

HB 1573-FN-L, relative to hazardous and dilapidated buildings. (Public and Municipal Affairs)

HB 1576-FN, relative to the employment of veterans on Veterans' Day. (Election Law and Internal Affairs)

HB 1578-FN, relative to insurance fraud. (Commerce, Labor and Consumer Protection)

HB 1581-FN-L, relative to the formation of stormwater utility districts. (Public and Municipal Affairs)

HB 1583-FN, requiring the bureau of emergency communications to develop and maintain a statewide emergency notification system. (Executive Departments and Administration)

HB 1591-FN, relative to vehicles traded to automobile dealers. (Commerce, Labor and Consumer Protection)

HB 1594-FN, relative to hazardous material reporting requirements and establishing fees for hazardous materials facilities and employees. (Energy, Environment and Economic Development)

HB 1595-FN, relative to driver's license renewals by persons engaged in overseas government service. (Transportation and Interstate Cooperation)

HB 1601-FN-A, relative to funding for certain capital projects of the Pease development authority. (Capital Budget)

HB 1613-FN, making changes to certain statutes relating to crimes against children. (Judiciary)

HB 1615-FN-A, establishing the state office of rural health in the department of health and human services and establishing a commission to recommend policies and programs to increase the number of persons in health professions servicing New Hampshire's rural and underserved areas. (Health and Human Services)

HB 1619-FN, requiring a report of the number of female inmates incarcerated in a state correctional facility receiving sex offender treatment. (Judiciary)

HB 1623-FN, relative to the penalty for possession of marijuana. (Judiciary)

HB 1628, relative to renewable energy generation incentive programs. (Energy, Environment and Economic Development)

HB 1631-FN, relative to the state purchase of biodiesel fuels. (Transportation and Interstate Cooperation)

HB 1633-FN, relative to the regulation of licensed alcohol and drug use counselors. (Executive Departments and Administration)

HB 1634, establishing the New Hampshire council on autism spectrum disorders. (Health and Human Services)

HB 1635-FN, relative to permits for motor vehicle salvage facilities and motor vehicle crushers. (Energy, Environment and Economic Development)

HB 1636, relative to automotive recycling. (Public and Municipal Affairs)

HB 1637, relative to reports to the cancer registry. (Health and Human Services)

HB 1640-FN, relative to the classification of convicted sex offenders and offenders against children and revising the provisions requiring DNA testing of criminal offenders. (Judiciary)

HB 1641-FN, relative to collections and refunds of road tolls. (Transportation and Interstate Cooperation)

HB 1645-FN-L, relative to administration of the New Hampshire retirement system and benefits for members. (Executive Departments and Administration)

HB 1647-FN-A, relative to demand response program revenue. (Energy, Environment and Economic Development)

HB 1648-FN, relative to search and rescue response expenses of the fish and game department. (Wildlife, Fish and Game and Agriculture)

HB 1652-FN-A, relative to the state obligation for payment of the non-federal share of FEMA public assistance and making an appropriation therefor. (Finance)

HOUSE MESSAGE

The House of Representatives has passed a Bill with the following title, in the passage of which it asks the concurrence of the Senate:

HB 1429, relative to private landfills.

INTRODUCTION OF HOUSE BILL

Sen. Foster offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, House legislation numbered **HB 1429**, shall be by this resolution read a first and second time by the therein listed title and referred to the therein designated committee.

Resolution adopted.

First and Second Reading and Referral

HB 1429, relative to private landfills. (Energy, Environment and Economic Development)

HOUSE MESSAGE

The House of Representatives has passed Bill(s) with the following title(s), in the passage of which it asks the concurrence of the Senate:

HB 65, relative to the Pease development authority.

HB 432-FN, relative to certain on-premises beverage and liquor licenses.

HB 436, expanding employee freedom of expression to all public employees.

HB 666-FN, relative to the immunizations included for reimbursement in the animal population control program.

HB 686-FN, relative to the regulation of remotely readable devices and the illegal use of payment card scanning devices or reencoders.

HB 690, establishing a pilot program for job skills training in volunteer work by unemployed individuals.

HB 841, relative to the appointment of parenting coordinators and establishing the family mediator and parenting coordinator certification board.

HB 877-FN, relative to the state recycling program.

HB 1127, relative to determining a bargaining unit in public employee labor relations.

HB 1222, prohibiting writing a text message while driving.

HB 1270, relative to limiting certain future interests in real property.

HB 1290-L, establishing a committee to study insurance coverage and related issues for children required to do community service.

HB 1293, relative to eligibility of dog and cat owners to participate in the state's reduced fee companion animal population control program.

HB 1297, relative to licenses for aquaculture issued by the fish and game department.

HB 1298-FN, making changes to the veterinary/medical/optometric education program.

HB 1303-FN, relative to limiting games of chance.

HB 1305-FN-L, relative to filing for election to town offices.

HB 1330, relative to the process for nonrenewal of teacher contracts.

HB 1338, establishing an arboviral illness task force and relative to mosquito control and abatement.

HB 1346, relative to the regulation of junk dealers, scrap metal dealers and pawnbrokers.

HB 1351, relative to fish and game license and registration agents.

HB 1376, relative to insurance penalties.

HB 1430, relative to the application of animal cruelty laws to horse and dog race tracks.

HB 1466, relative to the inventory fund in the department of safety and relative to the costs and production of number plates.

HB 1478, relative to the quorum for meetings of the equalization standards board.

HB 1485, relative to state reimbursement under the housing security guarantee program.

HB 1509-FN-A, establishing certain fees for operators of games of chance for the purpose of funding the education trust fund.

HB 1516-FN, relative to the divestiture of New Hampshire retirement assets relating to Sudan.

HB 1526, relative to the use of images of New Hampshire residents who died in the line of duty.

HB 1532, relative to snow and obstruction removal from parking spaces designated for disabled persons.

HB 1551-FN, relative to fees for special number plates for veterans.

HB 1596-FN-L, relative to fees charged by the motor vehicle division and drivers' license suspension or revocation for failure to register as a sexual offender.

HB 1604-FN, relative to the electronic toll collection system.

HB 1618-FN-A, relative to motor vehicle fees and motor vehicle violation fines and relative to appropriations from the highway fund.

HB 1622-FN-A, allowing counties to implement a first-time offender alcohol and substance treatment program, requiring the department of justice to administer grants to counties for such program, and making an appropriation therefor.

HB 1642-FN, providing additional funding for charter schools for the 2009 fiscal year.

HB 1643-FN, relative to medical benefits payment by the retirement system for eligible group I teachers and political subdivision employees in the retirement system.

HB 1646, relative to the 10-year transportation improvement plan.

HB 1651, allowing municipalities in Coos county to offer property tax exemptions to foster commercial and industrial construction.

HCR 10, urging communities to conduct handicap parking awareness days.

INTRODUCTION OF HOUSE BILL(S)

Sen. Foster offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, House legislation numbered from **HB 65 to HCR 10**, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

Resolution adopted.

First and Second Reading and Referral

HB 65, relative to the Pease development authority. (Executive Departments and Administration)

HB 432-FN, relative to certain on-premises beverage and liquor licenses. (Commerce, Labor and Consumer Protection)

HB 436, expanding employee freedom of expression to all public employees. (Commerce, Labor and Consumer Protection)

HB 666-FN, relative to the immunizations included for reimbursement in the animal population control program. (Wildlife, Fish and Game and Agriculture)

HB 686-FN, relative to the regulation of remotely readable devices and the illegal use of payment card scanning devices or reencoders. (Commerce, Labor and Consumer Protection)

HB 690, establishing a pilot program for job skills training in volunteer work by unemployed individuals. (Commerce, Labor and Consumer Protection)

HB 841, relative to the appointment of parenting coordinators and establishing the family mediator and parenting coordinator certification board. (Judiciary)

HB 877-FN, relative to the state recycling program. (Executive Departments and Administration)

HB 1127, relative to determining a bargaining unit in public employee labor relations. (Commerce, Labor and Consumer Protection)

HB 1222, prohibiting writing a text message while driving. (Transportation and Interstate Cooperation)

HB 1270, relative to limiting certain future interests in real property. (Judiciary)

HB 1290-L, establishing a committee to study insurance coverage and related issues for children required to do community service. (Judiciary)

HB 1293, relative to eligibility of dog and cat owners to participate in the state's reduced fee companion animal population control program. (Wildlife, Fish and Game and Agriculture)

HB 1297, relative to licenses for aquaculture issued by the fish and game department. (Wildlife, Fish and Game and Agriculture)

HB 1298-FN, making changes to the veterinary/medical/optometric education program. (Education)

HB 1303-FN, relative to limiting games of chance. (Ways and Means)

HB 1305-FN-L, relative to filing for election to town offices. (Election Law and Internal Affairs)

HB 1330, relative to the process for nonrenewal of teacher contracts. (Education)

HB 1338, establishing an arboviral illness task force and relative to mosquito control and abatement. (Public and Municipal Affairs)

HB 1346, relative to the regulation of junk dealers, scrap metal dealers and pawnbrokers. (Public and Municipal Affairs)

HB 1351, relative to fish and game license and registration agents. (Wildlife, Fish and Game and Agriculture)

HB 1376, relative to insurance penalties. (Commerce, Labor and Consumer Protection)

HB 1430, relative to the application of animal cruelty laws to horse and dog race tracks. (Wildlife, Fish and Game and Agriculture)

HB 1466, relative to the inventory fund in the department of safety and relative to the costs and production of number plates. (Transportation and Interstate Cooperation)

HB 1478, relative to the quorum for meetings of the equalization standards board. (Executive Departments and Administration)

HB 1485, relative to state reimbursement under the housing security guarantee program. (Finance)

HB 1509-FN-A, establishing certain fees for operators of games of chance for the purpose of funding the education trust fund. (Executive Departments and Administration)

HB 1516-FN, relative to the divestiture of New Hampshire retirement assets relating to Sudan. (Executive Departments and Administration)

HB 1526, relative to the use of images of New Hampshire residents who died in the line of duty. (Election Law and Internal Affairs)

HB 1532, relative to snow and obstruction removal from parking spaces designated for disabled persons. (Commerce, Labor and Consumer Protection)

HB 1551-FN, relative to fees for special number plates for veterans. (Election Law and Internal Affairs)

HB 1596-FN-L, relative to fees charged by the motor vehicle division and drivers' license suspension or revocation for failure to register as a sexual offender. (Judiciary)

HB 1604-FN, relative to the electronic toll collection system. (Transportation and Interstate Cooperation)

HB 1618-FN-A, relative to motor vehicle fees and motor vehicle violation fines and relative to appropriations from the highway fund. (Finance)

HB 1622-FN-A, allowing counties to implement a first-time offender alcohol and substance treatment program, requiring the department of justice to administer grants to counties for such program, and making an appropriation therefor. (Judiciary)

HB 1642-FN, providing additional funding for charter schools for the 2009 fiscal year. (Education)

HB 1643-FN, relative to medical benefits payment by the retirement system for eligible group I teachers and political subdivision employees in the retirement system. (Executive Departments and Administration)

HB 1646, relative to the 10-year transportation improvement plan. (Transportation and Interstate Cooperation)

HB 1651, allowing municipalities in Coos county to offer property tax exemptions to foster commercial and industrial construction. (Public and Municipal Affairs)

HCR 10, urging communities to conduct handicap parking awareness days. (Transportation and Interstate Cooperation)

HOUSE MESSAGE

The House of Representatives has passed a Bill with the following title, in the passage of which it asks the concurrence of the Senate:

HB 1408-L, relative to the right-to-know law.

INTRODUCTION OF HOUSE BILL

Sen. Foster offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, House legislation numbered **HB 1408**, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

Resolution adopted.

First and Second Reading and Referral

HB 1408-L, relative to the right-to-know law. (Public and Municipal Affairs)

HOUSE MESSAGE

The House of Representatives has passed Bill(s) with the following title(s), in the passage of which it asks the concurrence of the Senate:

HB 172-FN, relative to state meat inspection.

HB 1177, relative to prohibited interests in on-premises liquor licensees.

HB 1448-FN, relative to documents prepared by the department of transportation and reimbursement fees for such documents.

HB 1488, establishing a committee to study the feasibility of establishing pro se law libraries.

HB 1521-L, relative to Franklin Highway in the town of Andover.

HB 1610-FN, relative to motor carriers.

HB 1632, relative to continuing the commission to study the production and distribution of biodiesel in New Hampshire.

INTRODUCTION OF HOUSE BILL(S)

Sen. Foster offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, House legislation numbered from **HB 172 to HB 1632**, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

Resolution adopted.

First and Second Reading and Referral

HB 172-FN, relative to state meat inspection. (Wildlife, Fish and Game and Agriculture)

HB 1177, relative to prohibited interests in on-premises liquor licensees. (Executive Departments and Administration)

HB 1448-FN, relative to documents prepared by the department of transportation and reimbursement fees for such documents. (Transportation and Interstate Cooperation)

HB 1488, establishing a committee to study the feasibility of establishing pro se law libraries. (Judiciary)

HB 1521-L, relative to Franklin Highway in the town of Andover. (Public and Municipal Affairs)

HB 1610-FN, relative to motor carriers. (Transportation and Interstate Cooperation)

HB 1632, relative to continuing the commission to study the production and distribution of biodiesel in New Hampshire. (Energy, Environment and Economic Development)

HOUSE MESSAGE

The House of Representatives has passed Bill(s) with the following title(s), in the passage of which it asks the concurrence of the Senate:

HB 1301, relative to the definition of service dogs.

HB 1340, relative to the special account of the judicial retirement system.

HB 1644-FN-A, establishing a Coos county job creation tax credit.

HB 1649-FN-L, relative to the Medicaid long-term care eligibility determination process.

INTRODUCTION OF HOUSE BILL(S)

Sen. Foster offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, House legislation numbered from **HB 1301 to HB 1649** shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

Resolution adopted.

First and Second Reading and Referral

HB 1301, relative to the definition of service dogs. (Health and Human Services)

HB 1340, relative to the special account of the judicial retirement system. (Executive Departments and Administration)

HB 1644-FN-A, establishing a Coos county job creation tax credit. (Ways and Means)

HB 1649-FN-L, relative to the Medicaid long-term care eligibility determination process. (Health and Human Services)

HOUSE MESSAGE

The House of Representatives has passed Bill(s) with the following title(s), in the passage of which it asks the concurrence of the Senate:

HB 1288, allowing pharmacists to administer influenza vaccines.

HB 1289, relative to court-ordered placements for a child in need of services and relative to permanency hearings in juvenile cases.

HB 1311, relative to impaired driver intervention programs.

HB 1318, relative to temporary plates issued by motor vehicle dealers.

INTRODUCTION OF HOUSE BILL(S)

Sen. Foster offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, House legislation numbered from **HB 1288 to HB 1318**, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

Resolution adopted.

First and Second Reading and Referral

HB 1288, allowing pharmacists to administer influenza vaccines. (Executive Departments and Administration)

HB 1289, relative to court-ordered placements for a child in need of services and relative to permanency hearings in juvenile cases. (Judiciary)

HB 1311, relative to impaired driver intervention programs. (Judiciary)

HB 1318, relative to temporary plates issued by motor vehicle dealers. (Transportation and Interstate Cooperation)

REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bill(s):

HB 291, relative to licensure of fireworks sellers.

HB 385-FN, relative to licensing and insurance fees.

HB 794-FN, establishing a commission to study the feasibility of public funding of state election campaigns.

HB 1152-FN, relative to interpreting statutory deadlines.

HB 1166, relative to rate setting for interpreters for the deaf and hard of hearing.

HB 1172-FN, changing the name of the pari-mutuel commission to the racing and charitable gaming commission.

HB 1230, requiring pharmacists to charge an insured person the usual and customary price or the copayment, whichever is less, of filling a prescription.

HB 1266, allowing 50 caliber pistols to take game animals in the state.

HB 1277, relative to the definition of farm.

HB 1384, relative to the regulation of designated agents by the New Hampshire real estate commission, and relative to the disclosure of certain property conditions.

HB 1411, relative to rulemaking under the native plant protection act.

HJR 12, relative to support for research into colony collapse disorder.
Sen. D'Allesandro moved adoption of Report of Committee on Enrolled Bills.

Committee Report adopted.

Out of Recess.

LATE SESSION

Sen. Foster moved that the Senate adjourn from the Late Session.

Motion to adjourn adopted.

Adjournment from the Late Session.

April 10, 2008

The Senate reconvened at 10:00 a.m., a quorum being present.

The Reverend Canon Timothy Rich, chaplain to the Senate, offered the following remarks and prayer:

So I'm going a little bit off script here today because it came to my attention just this morning that two 17-year-old boys were killed on the roads in Gilford last night. Channel 9 reported the fatalities but not any of the details. And so as we convene today, there is a sadness at Laconia High School that, you know, we don't even want to imagine. They haven't released the names of the boys yet, but if we could have a moment of silence for them and for those who grieve their passing:
(Moment of silence observed by the Senate body.)

Oh gracious and loving God, God of our joys and God of our sorrows, we pray, make Your presence known to those who weep and grieve so deeply today in the wake of this tragic passing. Help them to know that You are near and help them to see signs of Your love in the family and friends who gather around them. And help all of us in this room who debate matters of one kind or another to remember how precious life is, and to remember that at the heart of all that we say and do should be the gift of love. In all this we pray in Your loving name. Amen

Sen. Gottesman led the Pledge of Allegiance.

Sen. Clegg is excused for the day.

INTRODUCTION OF GUESTS AND PRESENTATIONS

Trinity High School Robotics Championship Team, Granite State Regional Finalists to compete in the national competition.

Pembroke Academy Robotics Champion Team, Granite State Regional Finalist to compete in the national competition.

The Lockwood Family, Amherst.

Scott Spradling, WMUR-TV Channel 9's retiring State House news reporter.

Adam Sexton, WMUR-TV Channel 9's State House news reporter replacement.

Senate Pages: Caitlin Tetreau and Liana Tetreau, sisters from Prospect Mountain High School

SPECIAL ORDER

President Larsen moved, without objection, that HB 399 and HCR 17 be Special-Ordered to the Senate Session of April 17.

HB 399, relative to the minimum hourly rate of compensation.

HCR 17, encouraging the use of reusable shopping bags.

COMMITTEE REPORTS

HB 1245, relative to insurance department records, investigations, and enforcement. Commerce, Labor and Consumer Protection Committee. Ought to Pass, Vote 3-0. Senator DeVries for the committee.

SENATOR DEVRIES: Thank you very much, Madam President. I move House Bill 1245 ought to pass. This bill clarifies the documents and records required to be produced upon request from or during an insurance investigation. This bill is a request of the Insurance Department. House Bill 1245 ensures that information obtained by the Insurance Department during an investigation is confidential and not subject to disclosure to third parties. This bill enhances and protects the Department's ability to obtain what might otherwise be considered proprietary information from insurance companies and confidential information from consumers during an investigation. It also allows the Department to share the information obtained with other regulatory and law enforcement entities and to share nonproprietary or privileged information with a consumer about that consumer's own policy or claim. House Bill 1245 protects the privacy of the individual consumer because without these provisions, under the right-to-know law, the Insurance Department must provide personal information to a third party, which may include information such as the individual's medical records. The Commerce, Labor and Consumer Protection Committee asks for your support in voting House Bill 1245 ought to pass. Thank you, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on HB 1245.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 233-FN-A, specifying compensation for ballot law commissioners. Election Law and Internal Affairs Committee. Ought to Pass, Vote 3-1. Senator Burling for the committee.

MOTION TO TABLE

Senator Burling moved to have HB 233-FN-A laid on the table.

Motion adopted.

LAI D ON THE TABLE

HB 233-FN-A, specifying compensation for ballot law commissioners.

HB 1239, relative to the legislative youth advisory council. Election Law and Internal Affairs Committee. Ought to Pass, Vote 5-0. Senator DeVries for the committee.

SENATOR DEVRIES: Thank you again, Madam President. I move that House Bill 1239 ought to pass. This bill clarifies certain procedures of the Legislative Youth Advisory Council. The legislation is comprised of simple technical changes, and its sponsors include the legislative members of the Council. The Election Law and Internal Affairs Committee asks for your support of House Bill 1239. Thank you.

(The Chair recognized Sen. Reynolds to speak.)

SENATOR REYNOLDS: Thank you, Madam President. I rise in support of HB 1239. This bill makes some technical revisions in the statu-

tory authority for the Legislative Youth Advisory Council, and I want to just thank Rep. Carolyn Gargas, Sen. Kelly and others involved with this. One of the initial sponsors of this bill is a former state rep. from my beautiful Town of Plymouth, former State Rep. Deb Naro. We had a Legislative Youth Advisory Council form in Plymouth a couple weeks ago at the Plymouth Regional Senior Center, it was very well attended. And I think the Council does an outstanding job in trying to bring to our people, who will be our future leaders of our country, things that are going on in our state. So I want to thank the sponsors for this important bill. Thank you, Madam President.

The question is on committee recommendation of Ought to Pass on HB 1239.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 295, relative to fuel quality standards and testing requirements for combustion of biomass and biomass fuel. Energy, Environment and Economic Development Committee. Ought to Pass with Amendment, Vote 5-0. Senator Fuller Clark for the committee.

Energy, Environment and Economic Development

April 3, 2008

2008-1239s

08/09

Amendment to HB 295

Amend the title of the bill by replacing it with the following:

AN ACT relative to fuel quality standards and testing requirements for combustion of biomass and biomass fuel and clarifying a definition of provider of electricity.

Amend the bill by replacing section 1 with the following:

1 New Paragraph; Biomass Defined. Amend RSA 125-C:2 by inserting after paragraph III the following new paragraph:

III-a. "Biomass" means organic matter used as a fuel, not including wood derived from construction and demolition debris, as defined in RSA 149-M:4, IV-a; wood which has been chemically treated; or agricultural crops or aquatic plants or byproducts from such crops or plants, which have been used to rehabilitate a contaminated or brownfields site through a process known as "phytoremediation."

Amend the bill by replacing section 4 with the following:

4 New Paragraph; Standards and Testing Requirements for Biomass and Eligible Biomass Fuel. Amend RSA 125-C:6 by inserting after paragraph XIV the following new paragraph:

XIV-a. Establishing fuel quality standards and testing requirements for biomass other than round wood and wood chips derived from round wood or waste wood such as limbs, branches, brush, slash, bark, stumps, sawdust, saw mill trimmings, clean pallets, and untreated wood scraps from furniture and other manufacture and eligible biomass fuel related to the combustion of such materials at stationary sources. The commissioner may establish such standards as necessary to maintain statewide compliance with Clean Air Act standards and RSA 125-I.

Amend the bill by inserting after section 4 the following and renumbering the original section 5 to read as 6:

5 Providers of Electricity; Municipal Suppliers. Amend RSA 362-F:2, XIV to read as follows:

XIV. "Provider of electricity" means a distribution company providing default service or an electricity supplier as defined in RSA 374-F:2, II ***but does not include municipal suppliers.***

2008-1239s

AMENDED ANALYSIS

This bill authorizes the commissioner of the department of environmental services to establish fuel quality standards and testing requirements for biomass and eligible biomass fuel, as defined in the bill, related to the combustion of such materials at stationary sources.

This bill also clarifies the definition of "provider of electricity" under RSA 362-F, relative to electric renewable portfolio standard, by excluding municipal suppliers.

SENATOR FULLER CLARK: Thank you very much, Madam President. I move House Bill 295 ought to pass with amendment. This bill authorizes the Commissioner of the Department of Environmental Services to establish fuel quality standards and testing requirements for biomass and eligible biomass fuel. The committee amendment further defines "biomass fuel." House Bill 295 also moves the definition of "biomass" from the Electric Renewable Portfolio Standard statute to RSA 125-C concerning air pollution control where the Committee believes it belongs. Please join the Energy, Environment and Economic Development Committee and vote ought to pass with amendment. Thank you very much, Madam President.

The question is on the adoption of Committee Amendment 1239s.

Committee Amendment 1239s adopted.

The question is on the adoption of Ought to Pass as Amended on HB 295.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

HB 415-FN, establishing a geothermal assessment project. Energy, Environment and Economic Development Committee. Ought to Pass, Vote 5-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Madam President. I move House Bill 415 ought to pass. This bill requires the state geologist to conduct a geothermal assessment project. This bill also requires the reporting of geologic information by persons installing geothermal systems or exploring hydrothermal or geothermal resources. The state geologist testified in favor of this legislation and stated that the assessment project and reports can be accomplished with existing staff and resources, therefore costing the State no additional money. Please join the Energy, Environment and Economic Development Committee and vote ought to pass. And I thank you ahead of time.

The question is on the adoption of committee recommendation of Ought to Pass on HB 415-FN.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 1186, reducing the membership of 2 legislative oversight committees. Energy, Environment and Economic Development Committee. Ought to Pass, Vote 4-0. Senator Fuller Clark for the committee.

SENATOR FULLER CLARK: Thank you very much, Madam President. I move House Bill 1186 ought to pass. I'm sure the Senate will be delighted to hear that House Bill 1186 reduces the number of House and

Senate members on the oversight committee on telecommunications and the oversight committee on electric utility restructuring. Please join the Energy, Environment and Economic Committee and vote ought to pass. Thank you very much, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on HB 1186.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 1215, relative to the New Hampshire-Vermont interstate waste compact. Energy, Environment and Economic Development Committee. Ought to Pass, Vote 4-0. Senator Odell for the committee.

SENATOR ODELL: Thank you, Madam President. I move House Bill 1215 ought to pass. This bill repeals the New Hampshire-Vermont Interstate Waste Compact. It is a housekeeping bill that repeals a compact from statute for an organization that is in the process of going out of business. Please join the Energy, Environment and Economic Development Committee and vote ought to pass. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on HB 1215.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 1584-FN-A, creating a commission to study the recycling and disposal of electronic waste. Energy, Environment and Economic Development Committee. Ought to Pass with Amendment, Vote 5-0. Senator Fuller Clark for the committee.

**Energy, Environment, and Economic Development
April 3, 2008
2008-1240s
08/09**

Amendment to HB 1584

Amend the bill by replacing section 4 with the following:

4 Chairperson; Quorum. The members of the commission shall elect a chairperson from among the members. The first meeting of the commission shall be called by the first-named house member. The first meeting of the commission shall be held within 45 days of the effective date of this section. Three members of the commission shall constitute a quorum.

SENATOR FULLER CLARK: Thank you very much, Madam President. I move House Bill 1548 ought to pass with amendment. This bill creates a commission to study the recycling and disposal of electronic waste. The Committee agrees that electronic waste is a state as well as a national and global issue with considerable environmental and health implications that deserve further study. The committee amendment reduces the number of members necessary for a quorum from five to three. Because this bill was amended in the House into a study commission, the fiscal note no longer applies. There is no additional cost to the State. Please join the Energy, Environment and Economic Development Committee and vote ought to pass with amendment. Thank you very much, Madam President.

The question is on the adoption of Committee Amendment 1240s. Committee Amendment 1240s adopted.

The question is on the adoption of Ought to Pass as Amended on HB 1584-FN-A.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

HB 1153, relative to physician assistants and physicians regulation by the board of medicine. Executive Departments and Administration Committee. Ought to Pass, Vote 3-0. Senator Downing for the committee.

SENATOR DOWNING: Thank you, Madam President. I move House Bill 1153 ought to pass. This bill repeals the Advisory Committee of Physician Assistants. This changes the authority for examinations with physicians by the Board of Medicine and renames the unclassified position of a medical review subcommittee investigator. This is a minor housekeeping bill. Please support the motion of Ought to Pass. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on HB 1153.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 1394-FN, relative to procedures for approvals of nursing education programs. Executive Departments and Administration Committee. Ought to Pass, Vote 5-0. Senator Kenney for the committee.

SENATOR KENNEY: Thank you, Madam President. I move House Bill 1394-FN ought to pass. This bill allows the Board of Nursing to require certain approvals, affiliations and accreditations of nursing education programs regulated by the Board. This bill is a request of the committee established by two thousand ninety [sic]. This bill came out of a study committee from House Bill 542 last year. The overview was the education structure to making nursing programs better and responsible for setting up in New Hampshire. There's already a nursing shortage here in the state. This bill brings a consistent process and will help programs to give our nurses the degree they deserve. This is the blueprint that is approved with good standing with the resources this bill provides. Please support the motion of ought to pass. Thank you, Madam President.

(The Chair recognized Sen. Burling to speak.)

SENATOR BURLING: Thank you, Madam President. Madam President, this bill is exactly as was described by my colleague, Sen. Kenney, but it has come to our attention, after the committee work was done, that the language in the bill raises a potential threat to certain programs now being offered by charitable organizations and other organizations for LPNA's. And because we feel it's very important to clarify the impact of that language, I believe another colleague is about to make a motion, and I would encourage support for that motion. We need a little more time to get a floor amendment together.

MOTION TO TABLE

Sen. Sgambati moved to have HB 1394-FN laid on the table.

Motion adopted.

LAIID ON THE TABLE

HB 1394-FN, relative to procedures for approvals of nursing education programs.

HB 1607-FN, relative to firefighter services leave for state employees. Executive Departments and Administration Committee. Ought to Pass with Amendment, Vote 5-0. Senator Kelly for the committee.

**Senate Executive Departments and Administration
March 26, 2008
2008-1130s
05/10**

Amendment to HB 1607-FN

Amend RSA 227-L:5-a, III as inserted by section 1 of the bill by replacing it with the following:

III. All funds reimbursed for services provided under this section shall be deposited in the appropriate pay or overtime account of the agency for whom the state employee works.

IV. This section shall not apply to employees of the department of resources and economic development.

Amend the bill by replacing section 2 with the following:

2 Effective Date. This act shall take effect upon its passage.

SENATOR KELLY: Thank you, Madam President. I move House Bill 1607-FN ought to pass with amendment. This bill allows state employees who are certified volunteer wild land firefighters to have a leave of absence with pay to provide emergency assistance in other states under certain circumstances. The purpose of 1607 is to establish a leave policy for any state employee and provide assistance to requests by the Northeastern Forest Fire Compact of the Eastern Area Coordination Center in conjunction with the U.S. Forest Service or Federal Emergency Management Agency. This proposed legislation would allow state employees from agencies other than DRED to participate without having to use their annual leave. HB 1607 will help provide compensation for our firefighters who continue to be an integral part of our cities and towns, and constantly provide services to keep all of our citizens safe from unexpected hazards that may strike. This bill will take effect upon passage, and we urge you to please support the motion of ought to pass with amendment. Thank you, Madam President.

**The question is on the adoption of Committee Amendment 1130s.
Committee Amendment 1130s adopted.**

**The question is on the adoption of Ought to Pass as Amended
on HB 1607-FN.**

**Motion of Ought to Pass as Amended adopted, bill ordered to Third
Reading.**

HB 1155-FN-A, making an appropriation of certain revenues to the board of nursing. Finance Committee. Ought to Pass, Vote 3-0. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you, Madam President. I move House Bill 1155 ought to pass. This bill corrects a mistake made by the Board of Nursing during the budget process; the mistake left two critical positions unfunded. This bill will correct that error. The Board of Nursing is 125 percent agency, so the General Fund appropriation will be paid back through the revenue the Board generates. The Finance Committee asks your support for the motion of ought to pass. Thank you, Madam President.

**The question is on the adoption of committee recommendation
of Ought to Pass on HB 1155-FN-A.**

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 1341-FN-A, making an appropriation to the department of administrative services for an energy audit and system evaluation of the state house. Finance Committee. Ought to Pass, Vote 4-0. Senator Janeway for the committee.

SENATOR JANEWAY: Thank you, Madam President. I move House Bill 1341 ought to pass. This bill appropriates \$80,000 from federal funds, or from any other source except for State General Fund dollars, to the Department of Administrative Services for the purpose of conducting an energy audit and system evaluation of this State House. Buildings account for a large percentage of total energy demand. They also offer the greatest potential for savings and among the most rapid paybacks. An audit would be the first step. It's far too late to set an example. Such audits have been conducted for years, but we should get on with it. Be assured this energy audit does not extend to the occupants of the State House. Since the bill as amended by the House removes any negative impact to the General Fund, the Finance Committee asks your support for the motion of Ought to Pass. Thank you, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on HB 1341-FN-A.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

MOTION TO VACATE

Sen. Burling moved to vacate **HB 1509-FN-A** from the Executive Departments and Administration Committee to the Ways and Means Committee.

(The Chair recognized Sen. Burling to speak to his motion to vacate.)

SENATOR BURLING: Thank you, Madam President. This bill deals primarily with gaming and policies relative to gaming. There's very similar legislation, one might even say "sibling" legislation, currently before Ways and Means, and it just seems sensible to have both bills before one committee. With that in mind, I'd like to make my motion.

The question is on the motion to vacate HB 1509-FN-A from the Executive Departments and Administration Committee to the Committee on Ways and Means.

Motion to vacate adopted.

HB 1509-FN-A is vacated to Ways and Means Committee.

HB 1509-FN-A, establishing certain fees for operators of games of chance for the purpose of funding the education trust fund.

HB 678-FN, establishing a committee to study issues related to cochlear implants. Health and Human Services Committee. Ought to Pass with Amendment, Vote 2-0. Senator Janeway for the committee.

Health and Human Services

April 1, 2008

2008-1181s

04/05

Amendment to HB 678-FN

Amend subparagraph I(b) as inserted by section 2 of the bill by replacing it with the following:

(b) One member of the senate, appointed by the president of the senate.

SENATOR JANEWAY: Thank you, Madam President. I move House Bill 678-FN ought to pass with amendment. This bill establishes a committee to study issues related to cochlear implants. The "cochlear" is a spiral-shaped cavity of the inner ear which contains the nerve endings essential for hearing. The implant is a device that makes that connection where it has failed or doesn't exist. Why the study? Because there is uncertainty as to whether the work is a medical or an educational responsibility. And these things go well beyond the fitting and tuning of a hearing aid; they're somewhat more analogous to a pacemaker. The issue is under review in Washington, and there is a difference of opinion between Congress and the Department of Education as to whether this is an educational responsibility or a health responsibility. In the meantime there is a desire to study the issue here in New Hampshire, knowing how long things can take in Washington. The committee amendment does the usual, reduces the two Senators to one. The Health and Human Services Committee recommends House Bill 678-FN ought to pass with amendment, and asks for your support.

The question is on the adoption of Committee Amendment 1181s.

Committee Amendment 1181s adopted.

The question is on the adoption of Ought to Pass as Amended on HB 678-FN.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

HB 740-FN, relative to mental health services. Health and Human Services Committee. Ought to Pass, Vote 2-0. Senator Estabrook for the committee.

SENATOR ESTABROOK: Thank you, Madam President. I move House Bill 740-FN ought to pass. This bill is the request of the Department of Health and Human Services. First, it changes the name of the Glencliff Home for the Elderly to the "Glencliff Home," something that is supported by its residents. It also makes changes to RSA 135-C to make it consistent with reorganization of the Department of Health and Human Services. It changes the position of Superintendent at New Hampshire Hospital to CEO, and Assistant Superintendent to Chief Operating Officer. It authorizes that the position of Medical Director at New Hampshire Hospital can be authorized by the Commissioner, and that the Commissioner may appoint and terminate the people in these positions. The bill also authorizes information-sharing between community mental health centers and the New Hampshire Hospital with regard to involuntary admissions. It also authorizes advanced registered nurse practitioners with psychiatric training to facilitate revocation of a conditional discharge for involuntarily admitted patients. Please join the Committee in voting HB 740 ought to pass. Thank you, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on HB 740-FN.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 1167, relative to substituting generically equivalent drug products. Health and Human Services Committee. Ought to Pass, Vote 2-0. Senator Janeway for the committee.

SENATOR JANEWAY: Thank you again, Madam President. I move that House Bill 1167 ought to pass. House Bill 1167 clarifies the law regard-

ing the substitution of generically equivalent drug products for generics which cost a fraction of branded products. This bill requires prescribing practitioners to indicate by writing in "Medically necessary" on the prescription if they want the patient to receive a branded drug. That makes the generic product the default option and eliminates any uncertainty for the pharmacist. It was stated at the public hearing that several members of the Independent Pharmacy Association were being audited and that restitutions were being ordered where there was no record to support the use of the more expensive, branded product. Please join the Health and Human Services Committee in voting HB 1167 ought to pass. Thank you, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on HB 1167.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 1231, repealing the advisory panel on cancer and chronic diseases and the tobacco use advisory committee. Health and Human Services Committee. Ought to Pass, Vote 2-0. Senator Estabrook for the committee.

Sen. Estabrook moved to recommit.

Motion adopted.

HB 1231 is recommitted to the Health and Human Services Committee.

HB 1388, establishing a commission to study practices relative to medications prescribed to children in out-of-home placements. Health and Human Services Committee. Inexpedient to Legislate, Vote 3-0. Senator Gallus for the committee.

SENATOR GALLUS: Thank you, Madam President. I move House Bill 1388 inexpedient to legislate. This bill establishes a commission to study pharmacological agents prescribed to children in out-of-home placements. The Committee heard testimony in support of the bill; however, there was some hesitation on the Committee's behalf to call this an actual problem of physicians or pharmacists just putting these children on medication to sedate them, or if it was actually happening as a direct result of understaffed clinics or foster homes. It was stated that this demographic of children was at the highest risk of needing these psychotropic medications due to the struggles and hardships they have had to deal with throughout their entire lives. The Committee felt it would be more beneficial to wait for the results of the study commission that will be reporting in the summer before deciding how best to handle this very delicate situation. Please join the Health and Human Services Committee in voting House Bill 1388 inexpedient to legislate. Thank you, Madam President.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on HB 1388.

Motion of Inexpedient to Legislate is adopted.

HB 315, relative to criminal background checks of prospective municipal employees through the division of state police. Public and Municipal Affairs Committee. Ought to Pass with Amendment, Vote 4-0. Senator Burling for the committee.

Public and Municipal Affairs**April 1, 2008****2008-1192s****06/09****Amendment to HB 315**

Amend RSA 41:9-b, II as inserted by section 1 of the bill by replacing it with the following:

II. A candidate for employment in a position which the governing body or town manager determines requires a background investigation and a criminal history records check shall submit to the town a notarized criminal history records release form, as provided by the division of state police, which authorizes the release of the person's criminal records, if any. The candidate shall submit with the release form a complete set of fingerprints taken by a law enforcement agency as directed by the governing body or town manager. In the event that the first set of fingerprints is invalid due to insufficient pattern and a second set of fingerprints is necessary in order to complete the criminal history records check, the conditional offer of employment shall remain in effect. If, after 2 attempts, a set of fingerprints is invalid due to insufficient pattern, the town may, in lieu of the criminal history records check, accept police clearances from every city, town, or county where a candidate has lived during the past 5 years.

Amend the bill by replacing section 2 with the following:

2 Effective Date. This act shall take effect September 1, 2008.

SENATOR BURLING: Thank you, Madam President. Madam President, I move House Bill 315 ought to pass with amendment. This bill permits municipalities to obtain background checks and criminal histories on prospective employees through the Division of State Police. The committee amendment does two things. First, it makes it clear that fingerprints submitted as part of the process must be taken by law enforcement agencies. And, second, the amendment also extends the effective date to September 1st, 2008, in order to give the Department of Safety time to prepare for what will clearly be a heightened demand. The legislation will help save towns money and will make this process more expedient. It also has the backing of the Department of Safety which is quite eager to take on this role. The Public and Municipal Affairs Committee requests your support for House Bill 315. Thank you, Madam President.

The question is on the adoption of Committee Amendment 1192s.

Committee Amendment 1192s adopted.

The question is on the adoption of Ought to Pass as Amended on HB 315.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

HB 211-FN, requiring that driver's license applicants be informed of and examined on laws relating to blind pedestrians. Transportation and Interstate Cooperation Committee. Ought to Pass, Vote 2-0. Senator DeVries for the committee.

SENATOR DEVRIES: Thank you, Madam President. I move House Bill 211-FN ought to pass. This bill requires the Department of Safety to inform the applicant for a new or renewal driver's license of the safety issues surrounding blind pedestrians. The Department has already been doing this as a matter of courtesy. The brochure – and we have a copy of the brochure – will allow drivers to identify the symbols of blindness

that relate to blind pedestrians on the roadways. Please join the Transportation and Interstate Cooperation Committee in voting this bill ought to pass. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on HB 211-FN.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 1141, establishing a committee to study parking for wheelchair-lift vans. Transportation and Interstate Cooperation Committee. Ought to Pass with Amendment, Vote 4-0. Senator DeVries for the committee.

Transportation and Interstate Cooperation

April 2, 2008

2008-1214s

06/09

Amendment to HB 1141

Amend subparagraph I(b) as inserted by section 2 of the bill by replacing it with the following:

(b) One member of the senate, appointed by the president of the senate.

Amend the bill by replacing sections 3 and 4 with the following:

3 Duties. The committee shall:

I. Study parking for wheelchair-lift vans.

II. Communicate and coordinate with the governor's commission on disabilities.

4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named house member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Three members of the committee shall constitute a quorum.

SENATOR DEVRIES: Thank you, Madam President. I move House Bill 1141 ought to pass with amendment. This bill establishes a committee to study the concerns regarding parking needs of vans transporting disabled citizens. The Committee heard testimony relating to complaints on lack of accessibility of parking spaces and the abuse thereof, including the size of access aisles for cars or vans, and the lack of enforcement. The amendment decreases the number of Senate members as well as add the Governor's Commission on Disability as a source for the committee to utilize during their discussions. Please join the Transportation and Interstate Committee [sic] in voting this bill ought to pass with amendment. Thank you.

The question is on the adoption of Committee Amendment 1214s.

Committee Amendment 1214s adopted.

The question is on the adoption of Ought to Pass as Amended on HB 1141.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

HB 1220, establishing a commission to study the taxation of alternative fuel and electric-powered motor vehicles for the purpose of funding improvements to the state's highways and bridges. Transportation and Interstate Cooperation Committee. Ought to Pass with Amendment, Vote 3-0. Senator DeVries for the committee.

**Senate Transportation
March 26, 2008
2008-1126s
09/10**

Amendment to HB 1220

Amend the title of the bill by replacing it with the following:

AN ACT establishing a commission to study the taxation of motor vehicles for the purpose of funding improvements to the state's transportation system.

Amend the bill by replacing section 1 with the following:

1 Commission Established. There is established a commission to study the taxation of motor vehicles for the purpose of funding improvements to the state's transportation system.

Amend paragraph I(b) of section 2 of the bill by replacing it with the following:

(b) One member of the senate, appointed by the president of the senate.

Amend the bill by replacing sections 3 and 4 with the following:

3 Duties. The commission shall study the taxation of motor vehicles for the purpose of funding improvements to the state's transportation system, in particular relative to the impact of reduced funding due to fuel economy improvements and use of alternative fuels.

4 Chairperson; Quorum. The members of the commission shall elect a chairperson from among the members. The first meeting of the commission shall be called by the first-named house member. The first meeting of the commission shall be held within 45 days of the effective date of this section. Five members of the commission shall constitute a quorum.

2008-1126s

AMENDED ANALYSIS

This bill establishes a commission to study the taxation of motor vehicles for the purpose of funding improvements to the state's transportation system.

SENATOR DEVRIES: Thank you again, Madam President. I move HB 1220 ought to pass with amendment. This bill would establish an 11-member commission to study the taxation of alternative fuel in electric-powered motor vehicles. The purpose of the commission would be to look at the revenue impacts in the funding of future improvements on state's highways and bridges. This is an issue which soon has to be confronted for the purposes of revenue as motor vehicles not powered by fossil fuels become more popular, because of rising fuel costs and concerns for a cleaner environment. The committee amendment decreases the number of Senate members and changes the duties of the commission at the request of the Department of Transportation. Please join the Department of Interstate – Transportation and Interstate Cooperation Committee in voting this bill ought to pass with amendment. Thank you.

The question is on the adoption of Committee Amendment 1126s.

Committee Amendment 1126s adopted.

The question is on the adoption of Ought to Pass as Amended on HB 1220.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

HB 1235, relative to motorist duties when approaching highway emergencies. Transportation and Interstate Cooperation Committee. Ought to Pass with Amendment, Vote 3-0. Senator Letourneau for the committee.

Transportation and Interstate Cooperation

April 2, 2008

2008-1215s

03/09

Amendment to HB 1235

Amend the bill by replacing all after the enacting clause with the following:

1 Motorist Duties When Approaching Highway Emergencies; Emergency Road Service Vehicles. Amend RSA 265:37-a, IV to read as follows:

IV. Give a wide berth, without endangering oncoming traffic, to public safety personnel, ~~and~~ any persons in the roadway, **and stationary vehicles displaying blue, red, or amber emergency or warning lights.**

2 Effective Date. This act shall take effect 60 days after its passage.

2008-1215s

AMENDED ANALYSIS

This bill requires drivers to give wide berth to stationary vehicles displaying emergency or warning lights when approaching highway emergencies.

SENATOR LETOURNEAU: Thank you, Madam President. I move House Bill 1235 ought to pass with amendment. This bill clarifies what emergency vehicles will be given wide berth. Currently tow truck drivers and highway construction vehicles are not included in the statute which puts their safety at risk. With this legislation any stationary vehicle displaying blue, red or amber lights are included. The committee amendment strengthens the language as well as changes the effective date of the bill. Please join the Transportation, Interstate Cooperation Committee in voting this bill ought to pass as amended. Thank you very much.

The question is on the adoption of Committee Amendment 1215s.

Committee Amendment 1215s adopted.

The question is on the adoption of Ought to Pass as Amended on HB 1235.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

HB 1377, relative to New Hampshire's rest areas and welcome centers. Transportation and Interstate Cooperation Committee. Ought to Pass, Vote 3-0. Senator Burling for the committee.

SENATOR BURLING: Thank you, Madam President. Madam President, I move House Bill 1377 ought to pass. This bill directs both the Department of Resources and Economic Development and the Department of Transportation to make recommendations as to the most efficient practices and operations of the state rest areas and welcome centers. At present discussions are ongoing between the two departments, but representatives of both departments felt it would be a good idea to put in place a requirement that they come up with recommendations as to who will own or operate the rest areas and where responsibility will lie for the efficient management of them. It will

also direct budgetary needs for the 2010-2011 budget. Please join the Transportation and Interstate Cooperation Committee in voting this bill ought to pass. Thank you, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on HB 1377.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

RESOLUTION

Sen. Foster moved that the Senate adjourn from the Early Session, that the business of the Late Session be in order at the present time, that all bills and resolutions ordered to Third Reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

Motion to adjourn adopted.

Adjournment from the Early Session.

LATE SESSION

Third Reading and Final Passage

HB 211-FN, requiring that driver's license applicants be informed of and examined on laws relating to blind pedestrians.

HB 295, relative to fuel quality standards and testing requirements for combustion of biomass and biomass fuel.

HB 315, relative to criminal background checks of prospective municipal employees through the division of state police.

HB 415-FN, establishing a geothermal assessment project.

HB 678-FN, establishing a committee to study issues related to cochlear implants.

HB 740-FN, relative to mental health services.

HB 1141, establishing a committee to study parking for wheelchair-lift vans.

HB 1153, relative to physician assistants and physicians regulation by the board of medicine.

HB 1155-FN-A, making an appropriation of certain revenues to the board of nursing.

HB 1167, relative to substituting generically equivalent drug products.

HB 1186, reducing the membership of 2 legislative oversight committees.

HB 1215, relative to the New Hampshire-Vermont interstate waste compact.

HB 1220, establishing a commission to study the taxation of alternative fuel and electric-powered motor vehicles for the purpose of funding improvements to the state's highways and bridges.

HB 1235, relative to motorist duties when approaching highway emergencies.

HB 1239, relative to the legislative youth advisory council.

HB 1245, relative to insurance department records, investigations, and enforcement.

HB 1341-FN-A, making an appropriation to the department of administrative services for an energy audit and system evaluation of the state house.

HB 1377, relative to New Hampshire's rest areas and welcome centers.

HB 1584-FN-A, creating a commission to study the recycling and disposal of electronic waste.

HB 1607-FN, relative to firefighter services leave for state employees.

ANNOUNCEMENTS

SENATOR REYNOLDS (Rule 44): Madam President and Colleagues, I found out this morning in looking at the front page of *The Laconia Citizen* that two of my constituents are celebrating what can only be described as milestones in their lives: Horace Estes and his wife Louise are celebrating their 75th wedding anniversary. They live in Plymouth. And on top of that, Horace just had his 100th birthday. So I just want to congratulate this wonderful couple and hope the Senate will extend its best wishes to them, and I would just like to have my remarks entered into the permanent Journal. Thank you, Madam President.

SENATOR D'ALLESANDRO (Rule 44): Thank you, Madam President. Madam President, a distinguished jurist in New Hampshire, Francis "Whitey" Frasier, who's the District Court Judge in Hampton, graduate of the University of New Hampshire, member of Phi Kappa Theta fraternity, a fraternity brother of mine, I was an usher at his wedding, has received the Frank Kenison Award for Outstanding Jurisprudence. "Whitey" came from Kennett High School in Conway, New Hampshire, went to the University of New Hampshire, played football, was a member of the ski team and an outstanding lacrosse player; married the beautiful and talented Joyce Lernatowitz from Keene. And Joyce passed away a few years ago; she was without question one of the really, really fine, fine women, was a classmate of mine at the University. And "Whitey" and Joyce had five children. His children are located in New Hampshire. But "Whitey" is really known for his outstanding decisions as a judge. He's a caring, wonderful guy who's just done a great job at the District Court. I think police talk about him and his demeanor and the way he handles cases. And I knew Frank Kenison, knew him fairly well, he was a wonderful jurist, Chief Justice of our Court. And for "Whitey" to win this award, I think it's a wonderful tribute to a distinguished public servant. So I think all of you who know Judge Frasier and have been in contact with Judge Frasier, I hope you have an opportunity to congratulate him on a lifetime of public service. Thank you, Madam President.

SENATOR LETOURNEAU (Rule 44): Yes, Madam President, thank you very much. It's with great sadness that I rise and remind our colleagues of the passing of Dan McLeod, a friend of most of us. He was the president of the New Hampshire Automobile Dealers Association for 27 years. I had the pleasure of working with the man for over 12 years and found him to have integrity without question. And many of attended both the wake and the funeral this past weekend, and recognize that he has a young family and his passing is very sad. So I just wanted to make sure that everybody here recognizes that fact that Dan has passed away. Thank you so much. And if you'd like to print that, you can.

PRESIDENT LARSEN (Rule 44): Thank you. Sen. Letourneau, if I might add, as a resident of Concord and a neighbor, Dan McLeod's passing is one of great sadness, and I saw first-hand what a wonderful father he was and the joy he took in everyday life; an honest man and a good father, a good friend, and we all mourn his passing.

SENATOR BARNES (Rule 44): Thank you, Madam President. For the record, Mr. McLeod, Dan's wife, Debby, was Chief of Staff here in the Senate in 1992 under Senate President Ralph Hough.

President Larsen moved, without objection, that all Rule 44's are to be entered into the permanent record.

RESOLUTION

Sen. Foster moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, referring bills to committee, scheduling hearings, sending and receiving messages, processing enrolled bill reports and amendments and forming Committees of Conference.

Motion to recess adopted.

The Senate is in recess to the Call of the Chair.

**April 2, 2008
2008-1219-EBA
05/10**

Enrolled Bill Amendment to HJR 10

The Committee on Enrolled Bills to which was referred HJR 10

A RESOLUTION urging congress to allow for the interstate sale of state-inspected meat and poultry.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to HJR 10

This enrolled bill amendment makes technical corrections.

Enrolled Bill Amendment to HJR 10

Amend the third paragraph after the enacting clause by replacing line 3 with the following:

rural policy leaders in the northeast, and supports the goals of the NSAAS agreed to in its last annual

Amend the first paragraph after the resolving clause by replacing lines 1-3 with the following:

That the general court wishes to thank the members of the United States House of Representatives from New Hampshire who supported the inclusion of interstate meat inspection in the House version of the Farm Bill and urge members of the United States Senate from New Hampshire to join in co-sponsoring S.1150 and S. 1149 and the

Adopted.

**April 2, 2008
2008-1208-EBA
04/09**

Enrolled Bill Amendment to HJR 11

The Committee on Enrolled Bills to which was referred HJR 11

A RESOLUTION requesting the United States Department of Agriculture to provide redress for price reporting errors in milk prices.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to HJR 11

This enrolled bill amendment makes technical corrections.

Enrolled Bill Amendment to HJR 11

Amend the ninth paragraph after the enacting clause of the resolution by replacing line 5 with the following:

New Hampshire producers' ability to meet their obligations including rising feed, fuel, and fertilizer

Amend the first paragraph after the resolving clause of the resolution by replacing line 1 with the following:

That in order to make redress, the USDA provide back-payments together with interest as

Amend the fourth paragraph after the resolving clause of the resolution by replacing line 1 with the following:

That there be mandatory daily and weekly reporting of all dairy commodity transactions,

Adopted.

Out of Recess.

LATE SESSION

Sen. Foster moved that the Senate adjourn from the Late Session.

Motion to adjourn adopted.

Adjournment from the Late Session.

April 17, 2008

The Senate reconvened at 10:00 a.m., a quorum being present.

The Reverend Charles Clark, guest chaplain to the Senate, offered the prayer:

It's a great honor and privilege to be with you this morning. Let us pray:

On this beautiful April morning, with its signs of new life and its gift of new opportunities to be of use and service, we turn to you, O God, in thanks and praise for all Your providential care, made manifest in the works of an unceasing creation. Ruler of all nations, the God in whom we trust, and the author of liberty in this our native and our cherished land: guide, encourage, and bless, we pray, those gathered in this chamber now for the sacred task of governance to which the citizens of New Hampshire have summoned them as their Senators. Keep them throughout this day, and in all the days ahead, mindful of their high calling to be both the givers and the keepers of such laws as reflect Your good purposes for each and every person, both old and young, so that our longed-for peace, justice, and prosperity may flourish throughout the Granite State, and show forth Your glory as the source of all wisdom and goodness. And this we pray for the honor of Your great name and for the well-being of all Your people.

Amen

Sen. Foster led the Pledge of Allegiance.

INTRODUCTION OF GUESTS AND PRESENTATIONS

Donald and "Billy" Pingree, Northwood residents.
Rochester Chamber of Commerce members.

U.S. Army Reserve members in observance of the 100th Anniversary of the U.S. Army Reserve.

Sunapee High School French students and teacher, 2008 French Oratorical Contest winners.

"Kids for a Cooler Planet," Hanover High School students, sponsors of HCR 17 promoting the usage of environmentally appropriate reusable shopping bags.

Coach Dave Bettencourt.

Salem High School Field Hockey Team members, athletic director and principal, Class L State Champions.

Salem High School Girls' Gymnastics Team members and coaches, NHIAA State Champions.

Senate Pages: Calvin Finemore, Winnisquam Regional High School. Sarah Racicot, Winnisquam Regional High School.

COMMITTEE REPORTS

SPECIAL ORDER

President Larsen moved, without objection, that HB 399 would be Special-Ordered to the front of the Calendar and presented at this time.

HB 399, relative to the minimum hourly rate of compensation. Commerce, Labor and Consumer Protection Committee. Ought to Pass, Vote 4-2. Senator Cilley for the committee.

SENATOR CILLEY: Thank you, Madam President. I move House Bill 399 ought to pass as amended. This bill clarifies the overtime rate of compensation for certain employees. House Bill 399 closes a loophole in the variable rate of overtime in which an employee is paid half the amount of the overtime wages after working 40 hours or more. The Committee heard testimony from members of organized labor that this loophole affects workers in numerous New Hampshire companies. Similar legislation in HB 399 was passed in Connecticut in order to correct this problem after several attempts to negotiate through labor unions was unsuccessful. The Commerce, Labor and Consumer Protection Committee asks for your support in voting House Bill 399 ought to pass. Thank you, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on HB 399.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

Sen. Barnes is in opposition to HB 399.

MOTION OF RECONSIDERATION

Sen. Roberge having voted with the prevailing side, moved reconsideration of **HB 399**, the bill having been ordered to Third Reading.

Recess/Out of Recess.

Sen. Roberge withdrew the motion for reconsideration.

HCR 17, encouraging the use of reusable shopping bags. Energy, Environment and Economic Development Committee. Ought to Pass, Vote 5-0. Senator Fuller Clark for the committee.

SENATOR FULLER CLARK: Thank you, Madam President. I move HCR 17 ought to pass. This House Concurrent Resolution encourages consumers and retailers to use reusable shopping bags. The Committee received the same convincing testimony you heard this morning from, among others, Ellen,

John, Brian and Kyle, from the group, "Kids for a Cooler Planet." This HCR is intended to endorse the efforts being made by "Kids for a Cooler Planet," who successfully introduced reusable bags in their local communities Hanover, New Hampshire and Norwich, Vermont. Reusable bags are now used widely by consumers in these communities instead of paper and disposable bags. And you heard already that has saved 700,000 plastic bags from being used in those communities. "Kids for a Cooler Planet" also showed businesses that they can save money by buying many fewer disposable bags, make a small profit on selling reusable bags, and improve their environmental image: a win-win-win. Supporters of HCR 17 believe that by passing this resolution the New Hampshire Legislature will increase the awareness of the problems disposable bags bring, reduce the input into our landfills, and will encourage more retailers to sell and promote reusable bags. Please join the Energy, Environment and Economic Development Committee and vote ought to pass. Thank you very much, Madam President.

(The Chair recognized Sen. Reynolds to speak.)

SENATOR REYNOLDS: Thank you, Madam President. I rise in support of HCR 17, and I want to thank my colleague, Rep. David Pierce for asking me to be a co-sponsor of this important legislation. I would like to thank all of the young adults involved with "Kids for a Cooler Planet," their family members, their teachers, and their community for bringing this important resolution to our attention. I would also commend to my colleagues the "Kids for a Cooler Planet" website which has a lot of great information about the subject that we're moving on today. One of the most striking statistics on the website was that over a hundred billion disposable bags are used in the United States annually, and a vast majority of these bags end up in landfills. If the use of reusable bags is promoted, each reusable bag could replace dozens or even hundreds of disposable bags and thereby reduce pollution, reduce the amount of trash in landfill, save millions of trees, and help mitigate global warming. I am very proud of the young adults who have brought this matter forward. I think we all can look forward to a future generation of leaders that are concerned about our planet, and I want to thank them very much for bringing this forward. Thank you, Madam President.

(The Chair recognized Sen. D'Allesandro to speak.)

SENATOR D'ALLESANDRO: Thank you, Madam President. I rise in support of the resolution, and just would like to remind my colleagues that this is another great example of civics and civic engagement. And my honorable colleague from Milford, who I know is an enthusiastic supporter, believes strongly that this is the right thing to do. And I might also say to these young people: one of my former students was the president and CEO of Hannaford Brothers, a young man from Kennett High School in Conway, New Hampshire; a Dartmouth College graduate, got his master's from the University of New Hampshire, and was one of the really bold and innovative people in terms of marketing at grocery stores. So I think your example of civic engagement is something that we gain something from. And, again, we articulate that learning civic engagement, taking civics at the high school level, is just a wonderful way to get people involved in the process. And the process is you can do anything if you put your mind to it. So thank you very much. Thank you, Madam President.

(The Chair recognized Sen. Burling to speak.)

SENATOR BURLING: Thank you, Madam President. I have thanks to direct to these young adults, personally. Every evening when I drive home, I pass the Lebanon Landfill. And in late October a phenomenon of weather results in what I've taken to calling the "early Christmas Season" of the line of screen trees, which runs for about 450 yards down the Lebanon Landfill, begins to fill up with disposable bags. And by the first of December the consequence of American consumption litters those trees in a really horrific way. What you've done will change the quality of my life, and I just want to say thank you for that.

The question is on the adoption of the committee recommendation of Ought to Pass on HCR 17.

A roll call was requested by Sen. Barnes, seconded by Sen. Foster.

The following Senators voted Yes: Gallus, Reynolds, Kenney, Sgambati, Burling, Cilley, Janeway, Odell, Roberge, Kelly, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, DeVries, Letourneau, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.

The following Senators voted No: None.

Yeas: 24 - Nays: 0

Motion of Ought to Pass adopted, resolution ordered to Third Reading.

HB 759-FN, relative to administration and enforcement of banking laws. Commerce, Labor and Consumer Protection Committee. Ought to Pass with Amendment, Vote 6-0. Senator Barnes for the committee.

Commerce, Labor and Consumer Protection

April 9, 2008

2008-1319s

08/09

Amendment to HB 759-FN

Amend the bill by inserting after section 10 the following and renumbering the original sections 11-68 to read as 12-69, respectively:

11 Qualifications; Banking Commissioner and Deputy Bank Commissioner. Amend RSA 383:6 to read as follows:

383:6 Qualifications. No person who is not a resident of the state at the time of his or her appointment or who fails to become a resident of the state within one year after his *or her* appointment, and no person who is indebted to any corporation or association under the supervision of the commissioner, or who holds any stock or office in any such corporation or association, or who is engaged as principal or agent in the business of selling or negotiating in this state loans, stocks, or securities of any kind, or who is an officer or stockholder in any corporation engaged in such business, shall be eligible to hold or continue to hold the office of commissioner or deputy commissioner. The provisions of this section relative to indebtedness to a corporation or association under the supervision of the commissioner shall not disqualify a person who, at the time of his *or her* appointment, is indebted to such corporation or association for a home mortgage loan, *or if at a time subsequent to his or her appointment a legal transfer of the loan or conversion of a corporation or association results in the loan being held by a corporation or association under the supervision of the commissioner or deputy commissioner, provided that the indebtedness shall be limited to such pre-existing contracts.*

SENATOR BARNES: Thank you, Madam President. I move House Bill 759 ought to pass with amendment. This bill establishes additional remedies for violations of banking laws, modifies reporting and recordkeeping requirements of banking licenses, and makes certain technical changes to the law as regarding banking. This bill was requested by the Banking Department. The Commerce, Labor and Consumer Protection Committee asks your support of ought to pass. Thank you.

The question is on the adoption of Committee Amendment 1319s.

Committee Amendment 1319s adopted.

Sen. Gottesman offered a floor amendment.

Sen. Gottesman, Dist. 12

April 16, 2008

2008-1392s

08/09

Floor Amendment to HB 759-FN

Amend the bill by replacing section 11 with the following:

11 Qualifications; Banking Commissioner and Deputy Banking Commissioner. Amend RSA 383:6 to read as follows:

383:6 Qualifications. No person who is not a resident of the state at the time of his or her appointment or who fails to become a resident of the state within one year after his *or her* appointment, and no person who is indebted to any corporation or association under the supervision of the commissioner, or who holds any stock or office in any such corporation or association, or who is engaged as principal or agent in the business of selling or negotiating in this state loans, stocks, or securities of any kind, or who is an officer or stockholder in any corporation engaged in such business, shall be eligible to hold or continue to hold the office of commissioner or deputy commissioner. The provisions of this section relative to indebtedness to a corporation or association under the supervision of the commissioner shall not disqualify a person who, at the time of his *or her* appointment, is indebted to such corporation or association for a home mortgage loan, *or if at a time subsequent to his or her appointment a legal transfer of the loan or conversion of a corporation or association results in the loan being held by a corporation or association under the supervision of the commissioner or deputy commissioner, provided that the indebtedness shall be limited to such pre-existing contracts.*

SENATOR GOTTESMAN: Thank you, Madam President. I have a floor amendment that makes a technical correction which might otherwise have been cared for in Rules and Enrolled Bills, but I thought we'd just take care of it right now. The title I think said "Banking Commissioner" and "Deputy Bank Commissioner," and I believe it changes the title to "Deputy *Banking* Commissioner." And that is the sum and substance of the change.

PRESIDENT LARSEN: Floor Amendment 1392 has been proposed. Is there any discussion on the amendment?

The question is on the adoption of Floor Amendment 1392s.

Floor Amendment 1392s adopted.

The question is on the adoption of Ought to Pass as Amended on HB 759-FN.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

HB 1286-FN, relative to the licensing of mortgage bankers, mortgage brokers, and mortgage originators. Commerce, Labor and Consumer Protection Committee. Ought to Pass, Vote 6-0. Senator Roberge for the committee.

SENATOR ROBERGE: Thank you, Madam President. I defer to Sen. Hassan, please.

MOTION TO TABLE

Sen. Hassan moved to have HB 1286-FN laid on the table.

Motion adopted.

LAID ON THE TABLE

HB 1286-FN, relative to the licensing of mortgage bankers, mortgage brokers, and mortgage originators.

HB 1382, adopting the uniform prudent management of institutional funds act. Commerce, Labor and Consumer Protection Committee. Ought to Pass, Vote 5-0. Senator Reynolds for the committee.

SENATOR REYNOLDS: Thank you, Madam President. I move House Bill 1382-FN [sic] ought to pass. This bill adopts a new standard for prudent investing of institutional funds. The Committee heard testimony from the Charitable Trust Departments of the Attorney General's Office that House Bill 1382 will enact the Uniform Prudent Management Institutional Funds Act – and I was trying to put the acronym, the “UP-MIFA” – Act of 2006, an act which has already been adopted by 13 other states. The Committee was informed that if enacted, House Bill 1382 will provide charitable trusts and foundations with greater flexibility in developing investment strategies to meet the challenge of today's complex and ever-changing financial markets. It also will help attract investors to trust in New Hampshire, I would also add. The member of the Commerce, Labor and Consumer Protection Committee asks your support for ought to pass on House Bill 1382. Thank you, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on HB 1382.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 1591-FN, relative to vehicles traded to automobile dealers. Commerce, Labor and Consumer Protection Committee. Ought to Pass, Vote 6-0. Senator Cilley for the committee.

SENATOR CILLEY: Thank you, Madam President. I move House Bill 1591 ought to pass. This bill provides that when a person accepts a motor vehicle with an outstanding lien as a part of a retail transaction, the person shall pay off the outstanding lien within a specified period of time. The Committee heard testimony from the bill's prime sponsor and from the New Hampshire Auto Dealers Association, that nonpayment of outstanding debt on traded-in vehicles is a common problem that adversely affects consumer credit. House Bill 1591 addresses this issue by requiring that that payment be remitted to the lien holder within 21 days of the date of sale. The members of the Commerce, Labor and Consumer Protection Committee asks for your support in ought to pass on House Bill 1591. Thank you, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on HB 1591-FN.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 1240, relative to disqualification of certain election officers and relative to arrangement of polling places. Election Law and Internal Affairs Committee. Ought to Pass, Vote 4-0. Senator Letourneau for the committee.

SENATOR LETOURNEAU: Thank you, Madam President. I move House Bill 1240 ought to pass. This bill permits certain election officers whose names appear on a ballot to perform official duties other than handling marked ballots and counting votes. This bill also permits pens to be used in place of pencils in the polling places. The legislation allows for the use of pens with machine-readable ink on ballots; it allows election officials who appear on the ballot for non-election official office to work under official capacities but not involved in counting votes or handling marked ballots. The Election Law and Internal Affairs Committee asks for your support on this bill. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on HB 1240.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 1335, establishing a commission to study the effects of post-traumatic stress disorder and traumatic brain injury suffered by New Hampshire soldiers and veterans returning from Iraq and Afghanistan. Election Law and Internal Affairs Committee. Ought to Pass with Amendment, Vote 4-0. Senator DeVries for the committee.

Election Law and Internal Affairs

April 9, 2008

2008-1314s

09/03

Amendment to HB 1335

Amend the bill by replacing section 4 with the following:

4 Chairperson; Quorum. The members of the commission shall elect a chairperson from among the members. The first meeting of the commission shall be called by the first-named house member. The first meeting of the commission shall be held within 45 days of the effective date of this section. Five members of the commission shall constitute a quorum.

SENATOR DEVRIES: Thank you, Madam President. I move that House Bill 1335 ought to pass with amendment. This bill establishes a commission to study the effects of post-traumatic stress disorder and traumatic brain injuries suffered by New Hampshire soldiers and veterans returning from Iraq and Afghanistan. The amendment only changes the quorum size. This legislation looks at this important issue and how best to help our returning servicemen and servicewomen who suffer with the serious effects of brain injury and PTSD. The Commission will include a wide range of members who can offer needed input. The Election Law and Internal Affairs Committee requests your support for House Bill 1335 with amendment. Thank you.

The question is on the adoption of Committee Amendment 1314s.

A roll call was requested by Sen. Barnes, seconded by Sen. Letourneau.

The following Senators voted Yes: Gallus, Reynolds, Kenney, Sgambati, Burling, Cilley, Janeway, Odell, Roberge, Kelly, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, DeVries, Letourneau, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.

The following Senators voted No: None.

Yeas: 24 - Nays: 0

Committee Amendment 1314s adopted.

The question is on the adoption of Ought to Pass as Amended on HB 1335.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

MOTION TO REMOVE FROM THE TABLE

Sen. Burling moved to have HB 233-FN-A removed from the table.

Motion adopted.

HB 233-FN-A, specifying compensation for ballot law commissioners.

The question is on the adoption of committee recommendation of Ought to Pass.

PARLIAMENTARY INQUIRY

SENATOR BURLING: Parliamentary inquiry, Madam President, just to make sure I've got it right. I do have an amendment to reflect some changes. What we would do then is move "yes" on ought to pass, and then I'd introduce the floor amendment?

PRESIDENT LARSEN: I will get this into a Second Reading and then there will be the time for a floor amendment.

SENATOR BURLING: Thank you.

Sen. Burling offered a floor amendment.

Sen. Burling, Dist. 5

April 17, 2008

2008-1411s

05/04

Floor Amendment to HB 233-FN-A

Amend the title of the bill by replacing it with the following:

AN ACT authorizing mileage for ballot law commissioners and members of the installation standards board.

Amend the bill by replacing all after the enacting clause with the following:

1 Ballot Law Commission; Compensation. Amend RSA 665:4 to read as follows:

665:4 Compensation. The commissioners shall receive [~~such compensation for their services as shall be approved by the governor and council~~] **reimbursement for mileage at the same rate provided for state employees**. All bills for supplies required by the commission, necessary expenses of the commissioners, and fees of witnesses summoned by the commission shall be paid by the state upon the approval of the governor and council.

2 New Section; Manufactured Housing Installation Standards; Compensation and Expenses. Amend RSA 205-D by inserting after section 2 the following new section:

205-D:2-a Compensation and Expenses. The members of the board shall each be allowed their mileage and necessary traveling expenses incurred in carrying out their official duties.

3 Effective Date. This act shall take effect 60 days after its passage.

2008-1411s**AMENDED ANALYSIS**

This bill authorizes mileage compensation for ballot law commissioners and members of the installation standards board.

SENATOR BURLING: This bill as originally drafted would have offered the members of the Ballot Law Commission compensation, a per diem and a reimbursement for mileage. After some discussion, at the appropriate time I will offer an amendment to change the bill. Do we need – can I move the floor amendment now? Oh, I'm sorry. I'm sorry, I thought we needed –

PRESIDENT LARSEN: You may speak to that as it's being distributed.

SENATOR BURLING: Okay. Floor Amendment 1411 changes the terms of the bill to offer mileage reimbursement for the members of the Ballot Law Commission and the Manufactured Housing Board. These two boards do very important work; they are, at various times of the years, in session a lot. In 2006, if I remember, the members of the Ballot Law – well, I appeared before them seven times; I think they had many more cases than that. All it would do is give them mileage reimbursement. As we see the price of gasoline continue to skyrocket, the least we can do for these volunteers who do such an important job, is to give them some reimbursement. And that's the tenor of the amendment.

(The Chair recognized Sen. Gottesman for a question of Sen. Burling.)

SENATOR GOTTESMAN: Sen. Burling, I understand the first change, but I'm looking down at the bottom where it talks about compensation *and* expenses for members of the Manufactured Housing Installation Standards Board, and I'm wondering whether it was supposed to be just mileage.

SENATOR BURLING: Oh, I'm sorry. It is supposed to be just mileage. This is what happens when we rush to get things done. I had thought that's what we were getting. But ... perhaps we can ... I can't do that, but somebody could.

MOTION TO TABLE

Sen. Foster moved to have HB 233-FN-A laid on the table.

Motion adopted.

LAID ON THE TABLE

HB 233-FN-A, specifying compensation for ballot law commissioners.

HB 1635-FN, relative to permits for motor vehicle salvage facilities and motor vehicle crushers. Energy, Environment and Economic Development Committee. Ought to Pass, Vote 6-0. Senator Odell for the committee.

SENATOR ODELL: Thank you, Madam President. This bill is more important than these brief comments will reflect. I move House Bill 1635 ought to pass. This will require the Department of Environmental Services to establish permits for maintaining and operating a motor vehicle salvage facility and operating a motor vehicle crusher. These permits will help the Department assure compliance with a wide range of existing environmental requirements. The Department believes that this legislation will improve the agency's ability to assure that the motor vehicle salvage industry is protecting environment quality and the public health in New Hampshire. The industry worked with the Department and welcomes

this legislation. There will be no increase in cost because the Department already regulates motor vehicle salvage facilities, and there will be no additional fee charged for this general permit. Please join the Energy, Environment and Economic Development Committee and vote ought to pass. Thank you, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on House Bill 1635-FN.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 1276, establishing a committee to study revisions to the auctioneers' practice act. Executive Departments and Administration Committee. Ought to Pass with Amendment, Vote 5-0. Senator Cilley for the committee.

Senate Executive Departments and Administration
April 8, 2008
2008-1278s
10/04

Amendment to HB 1276

Amend the title of the bill by replacing it with the following:

AN ACT establishing a committee to study revisions to the auctioneers' practice act and the regulation of third-party Internet sales.

Amend the bill by replacing sections 1-3 with the following:

1 Committee Established. There is established a committee to study revisions to the auctioneers' practice act, RSA 311-B, and the regulation of persons engaged in the business of facilitating sales of third-party goods over the Internet.

2 Membership and Compensation.

I. The members of the committee shall be as follows:

(a) Three members of the house of representatives, 2 of whom shall be from the executive departments and administration committee and one of whom shall be from the commerce committee, appointed by the speaker of the house of representatives.

(b) One member of the senate, appointed by the president of the senate.

II. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

3 Duties. The committee shall study recent proposals to revise RSA 311-B, including HB 544 as introduced in 2007 and HB 1276 as introduced in 2008 and any proposed amendments thereto. The committee shall also study the regulation of persons engaged in the business of facilitating sales of third-party goods over the Internet. In making its study, the committee shall hold at least 2 public hearings, and shall solicit input from auctioneers and persons engaged in the business of facilitating sales of third-party goods over the Internet.

2008-1278s

AMENDED ANALYSIS

This bill creates a committee to study revisions to the auctioneers' practice act and the regulation of third-party Internet sales.

SENATOR CILLEY: Thank you, Madam President. I move House Bill 1276 ought to pass with amendment. This bill creates a committee to study revisions to the auctioneer's practice and the regulation of persons engaged in the business of facilitating sales of third-party goods over the

internet. The amendment clarifies the duties of the study committee, to solicit input from auctioneers and persons engaged in the business of sales, and hold public hearings. Please support the motion of ought to pass with amendment. Thank you, Madam President.

The question is on the adoption of Committee Amendment 1278s. Committee Amendment 1278s adopted.

The question is on the adoption of Ought to Pass as Amended on HB 1276.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

HB 1278, relative to the purchase of computer services and supplies for state agencies. Executive Departments and Administration Committee. Ought to Pass, Vote 4-0. Senator Kelly for the committee.

SENATOR KELLY: Thank you, Madam President. I move House Bill 1278 ought to pass. This bill was requested by the Office of Information Technology to clarify the procedure for purchasing computer services and supplies by the Division of Plant and Property Management and the Office of Information Technology. HB 1278 includes annual maintenance agreements and technical support in the definition of "computer supplies," as well as ensuring that the procurement is consistent with the State Information Technology Plan. This bill reflects the realities of the technology marketplace. Please support the motion of ought to pass. Thank you, Madam President.

(The Chair recognized Sen. Reynolds to speak.)

SENATOR REYNOLDS: Thank you, Madam President. Madam President, I rise in support of this bill. This bill was brought forward by my dear colleague and friend in the House, Rep. Carole Estes, who is a retired technologist from another state. She has brought a level of expertise and knowledge to our state, and I just want to note and thank her for her service, and urge your support. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on HB 1278.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 1313, relative to voting by the chairman of the retirement system board of trustees. Executive Departments and Administration Committee. Ought to Pass, Vote 5-0. Senator Downing for the committee.

SENATOR DOWNING: Thank you, Madam President. I move House Bill 1313 ought to pass. This bill allows the chair of the New Hampshire Retirement System Board of Trustees to vote in matters before a subcommittee of the Board. This is a simple bill and a reasonable request. Each trustee will be entitled to one vote on the Board of Trustees. The Chair will remain nonvoting except in the event of a tie vote. Please support the motion of ought to pass. Thank you.

MOTION TO TABLE

Sen. Foster moved to have HB 1313 laid on the table.

Motion adopted.

LAIID ON THE TABLE

HB 1313, relative to voting by the chairman of the retirement system board of trustees.

HB 1643-FN, relative to medical benefits payment by the retirement system for eligible group I teachers and political subdivision employees in the retirement system. Executive Departments and Administration Committee. Ought to Pass, Vote 4-1. Senator Downing for the committee.

SENATOR DOWNING: Thank you, Madam President. I move House Bill 1643-FN ought to pass. This bill extends the dates for eligibility for retirement system payment of the medical benefit subsidy for eligible Group I teachers and political subdivision employees from July 1st, 2008 to July 1st, 2009. HB 1643 gives Group I retirees more flexibility in their retirement planning and to stem a potential rush to retire, which could drain many school systems across our state. The System's actuary states that the change in medical subsidy eligibility date will have impact on employer health contribution rates made towards the employees' and teachers' 401(h) health subtrust. Please support the motion of ought to pass. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on HB 1643-FN.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 185-FN, relative to economic revitalization zone credits. Finance Committee. Ought to Pass, Vote 6-0. Senator Sgambati for the committee.

SENATOR SGAMBATI: Thank you, Madam President. I move House Bill 185 ought to pass. The original version of the bill sought to extend the sunset provision for the Community Reinvestment and Opportunity Zones Program, also known as CROP. The House amended the bill at the request of the Department of Resources and Economic Development. The legislation now makes three minor changes to the bill passed last year: It clarifies that companies may enter into multi-year agreements with DRED, where the total credit exceeds a single-year cap; it states that the tax credit is taken first against the Business Profits Tax rather than the Business Enterprise Tax; and it makes clear that the prior arrangements made under the CROP program remain in effect. The Finance Committee asks for your support of motion of ought to pass for this very important bill to support our businesses. Thank you, Madam President.

The question is on the adoption of the committee recommendation of Ought to Pass on HB 185-FN.

A roll call was requested by Sen. Foster, seconded by Sen. Barnes.

The following Senators voted Yes: Gallus, Reynolds, Kenney, Sgambati, Burling, Cilley, Janeway, Odell, Roberge, Kelly, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, DeVries, Letourneau, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.

The following Senators voted No: None.

Yeas: 24 - Nays: 0

Motion of Ought to Pass adopted, bill ordered to Third Reading.

Recess/Out of Recess.

HB 1367, relative to the conversion to a new state financial accounting and statewide budget system. Finance Committee. Ought to Pass with Amendment, Vote 7-0. Senator D'Allesandro for the committee.

Sen. D'Allesandro, Dist. 20
April 2, 2008
2008-1202s
05/10

Amendment to HB 1367

Amend the bill by replacing all after section 10 with the following:

11 Extension of Dates for Submissions of Expenditure Requirements and Tentative Budget During 2008.

I. Notwithstanding the date established in RSA 9:4, during the year 2008 all departments of the state shall transmit to the commissioner of administrative services the materials set forth in RSA 9:4 on or before October 15, 2008. In case of the failure of any department to submit such estimates within the time above specified, the commissioner of administrative services shall cause to be prepared such estimates for such department as in the commissioner's opinion are reasonable and proper.

II. Notwithstanding the date established in RSA 9:6, during the year 2008, upon the receipt of the estimates of expenditure requirements called for by RSA 9:4, adjusted as to date by paragraph I, and the preparation of the estimates of income called for by RSA 9:5, and not later than November 15, 2008, the commissioner of administrative services shall cause to be prepared a tentative budget conforming as to scope, contents, and character to the requirements of RSA 9:3 and containing the estimates of expenditure and revenue as called for by RSA 9:4, adjusted as to date by paragraph I, and RSA 9:5, which tentative budget shall be transmitted to the director of the budget for submittal to the governor. The budget shall be made available in printed format and in at least one electronic computer file format in common use at the time.

12 Transfer of Appropriations with Fiscal Committee Approval. Amend RSA 9:17 to read as follows:

9:17 Transfer Within Division or Functional Unit. The governor and council, ***with the prior approval of the fiscal committee of the general court***, may authorize the commissioner of administrative services to make such transfers of appropriation items and changes in allocation of funds available for operational purposes within any division or functional unit of a department or institution as may be necessary or desirable to best carry out the purpose of such division or functional unit of such department or institution.

13 Reference Change. Amend RSA 9:17-a through 9:17-c to read as follows:

9:17-a Limitations. Notwithstanding the provisions of RSA ~~[9:16 and]~~ 9:17, no transfer shall be made:

I. From appropriation items for equipment to any other use or purpose.

II. To or from any out of state travel appropriation and the state treasurer and state commissioner of administrative services shall maintain separate appropriation accounts for all out of state travel appropriations.

II-a. From any appropriation items for permanent personal services to any other use or purpose, provided however that this provision shall not supersede the provisions of RSA 99:4.

III. [Repealed.]

IV. The provisions of this section shall apply to transfers in general appropriations, capital budget appropriations and in any other special appropriations.

9:17-b Fish and Game Limitation. Notwithstanding the provisions of RSA ~~[9:16 and]~~ 9:17, no transfers shall be made into the appropriation for the fish and game department for land acquisition.

9:17-c Employee Benefit Adjustment Account. Whereas the appropriations for employee benefits in state departments and institutions may upon occasion not be totally needed for each position due to vacancies and personnel turnover, the department of administrative services shall transfer said amount quarterly from the departmental or institutional appropriation to a special account to be known as the employee benefit adjustment account. This fund shall lapse at the end of each fiscal year and revert to the appropriate fund. Upon the certification of the commissioner of administrative services, subject to the approval of governor and council, the employee benefit account shall be available for transfer to departments and institutions in amounts that are deemed necessary to pay the state's required proportionate share of any legally authorized employee benefit. Notwithstanding the provisions of RSA ~~[9:16 and]~~ 9:17, no transfer shall be made from any appropriation for employee benefits to any other appropriation for any other use or purpose except as provided in this section.

14 Reclassification of Positions; Reference Change. Amend RSA 21-I:56, III to read as follows:

III. Notwithstanding the provisions of RSA ~~[9:16;]~~ 9:17 and ~~[17-a]~~ **9:17-a**, whenever the director of personnel in consultation with the affected department shall determine that the personal services-permanent line item in any PAU and the salary adjustment fund cannot cover the cost of funding a reclassification and a transfer of funds from other line items is required, the director of personnel shall notify the governor and council and the fiscal committee as soon as possible. No such transfer shall be permitted without approval first of the fiscal committee and then of governor and council.

15 Funds Set Aside. Amend RSA 124:16 to read as follows:

124:16 Funds Set Aside. Every state department, board, institution, commission or agency which receives federal funds shall set aside an amount equal to ~~[-2 percent]~~ **the rate approved in the statewide indirect cost plan** of the funds received. **The amount set aside shall be used** to pay for financial and compliance audits as required by the federal government or by state statute.

16 Repeal. The following are repealed:

I. RSA 9:4-c, relative to monitoring the Old Man of the Mountain by the department of resources and economic development.

II. RSA 9:16, relative to transfers of appropriations.

III. RSA 21-I:6, III, relative to recommendation of quarterly allotments for operation of the budget.

IV. RSA 124:6, relative to authority for certain capital improvement agreements.

V. RSA 124:7-9, relative to requirements for state participation in federal aid.

17 Effective Date. This act shall take effect upon its passage.

2008-1202s

AMENDED ANALYSIS

This bill provides the authority and oversight for the conversion to a new statewide budgeting, accounting, and financial and human resources management system. The bill also repeals certain budget and federal aid requirements.

SENATOR D'ALLESANDRO: Thank you, Madam President. I move House Bill 1367 ought to pass with amendment. This bill authorizes Administrative Services to map the second year of the budget to a new chart of accounts. This is essential for the conversion to the new statewide financial system. The bill also delineates what procedures Administrative Services must enact to tell other agencies how to handle the process dealing with the new system. The amendment to this bill that the Finance Committee adopted was the result of a combined effort of the Office of the Legislative Budget Assistant and the Department of Administrative Services to enhance the bill. The amendment cleans up several outdated statutes, repealing some that are no longer needed, and enhancing others. The Finance Committee asks your support for the motion of ought to pass as amended. Thank you, Madam President.

(The Chair recognized Sen. Gatsas to speak.)

SENATOR GATSAS: Thank you, Madam President. I rise in opposition to not only the committee amendment, but also 1367 in itself. I read the legislation. The monthly quarterly assurance status report is almost what this legislation says. This report's been around for almost a year and a half. The only thing that this piece of legislation doesn't do that the quality monthly assurance report has said are the two vital things in putting this ERP system in place, is, one, that there should be a plan if we don't move forward – that if we don't move forward with the ERP system, that there should be a plan to take care of that. Nowhere in this legislation – and this report, they've been asking for that plan ... for many months. I wasn't sure if somebody wanted to do an introduction. I will yield.

(Introduction of school students.)

SENATOR GATSAS (resuming): So I rise in opposition only because this plan has been out here for the better part of 18 months. If people have been reading this plan, we wouldn't need the legislation, because this plan basically spells out, word for word, what this legislation says. Some of the things that this plan says that the legislation doesn't say is continually changing the person that is driving this force creates a problem. I noticed in this that it asks for a person to be put into that position, and I'm not sure if Commissioner Toumpas is going to be relieved of his duties or not, but certainly he's been driving it. I've said from, probably six months ago, that the ERP system is basically on "life support"; I'm not sure who's going to pull the plug or when the plug will be pulled, but it certainly appears that it's been on life support. The Fiscal Committee is getting an update on exactly what's supposed to happen next week. I think it's crucial, because if we put this plan in place, and it's easy enough to say Administrative Services have the guidelines, they've had them all along. And I think we should at least understand that as soon as we close the books on July 1st, on the '08 numbers, those numbers are going to change. We've heard from the auditors that states that have done changes in ERP's have had their financials delayed for two years. So there's no question that we have a system that is very old. Absolutely no question. We're implementing a system and we're doing integrated testing without anybody agreeing on what we're going to test. So we're putting a stamp of approval with this piece of legislation on a system that's on life support. They've already extended the date to go to October. We were supposed to implement July 1st. It can't be done, not ready to go. Can't meet the standards that the quality assurance people said we were supposed to meet. So we put it off to October.

My question is, then, how do we tie the two systems together. Now, this bill says we're going to run the comparable numbers beginning July 1st for the new system in the older system. We all know that that chart of account's going to change drastically. They've been talking about that from day one. So, again, I'm in opposition to the legislation because this is a "stamp of approval" on an ERP system that's on life support. Thank you, Madam President.

(The Chair recognized Sen. D'Allesandro to speak.)

SENATOR D'ALLESANDRO: Thank you, Madam President. Sen. Gatsas does make some very good points, and we should digest all of those points. But the reason for the passage of this bill is this. We have had a system that's been in place for over 30 years. That system, in essence, does not give us the financial information that we need in order to properly do our jobs as members of this Legislature. The progress made by ERP has been slow, but it's been good, and most recently we've had a change as Admin. Services; we've had a change with Mr. Toumpas, Commissioner Toumpas running the program; and we've had a synergy created in terms of bringing this project to fruition. Now, this bill is important because it gets rid of a lot of antiquated legislation. For example, it repeals the Capital Budget statutes that had to do with the Capital Budget of 1949. We don't need that on the books. It does another series of things in terms of repeals that really should be repealed. We all know full well that moving to the ERP system is challenging, but we really don't have a choice. We need a better system in order for us to do our jobs more effectively. So I ask you to support this piece of legislation. We are making progress. Thank you, Madam President.

(The Chair recognized Sen. Barnes for a question of Sen. D'Allesandro.)

SENATOR BARNES: Thank you, Senator. A couple of questions.

SENATOR D'ALLESANDRO: Yes, I'm ready.

SENATOR BARNES: How long has this been going on? It seems to me that six years ago I was on a committee working on this and two or three purveyors got fired or quit or did something as this system's gone on. Is it close to six years?

SENATOR D'ALLESANDRO: Thank you very much for the question, Sen. Barnes.

SENATOR BARNES: You're welcome.

SENATOR D'ALLESANDRO: We procrastinated in terms of developing a supplier. We put an RFP out, we cancelled that RFP. This has been going on for in excess of two years, this association with this entity.

SENATOR BARNES: With this entity.

SENATOR D'ALLESANDRO: Yes.

SENATOR BARNES: Follow-up question. Thank you. How much money, not just the two years, but since this thing has been played with – and I say six years, maybe I'm wrong, maybe it's longer – have any idea how much money we have into this program?

SENATOR D'ALLESANDRO: Thank you again for the question, Sen. Barnes.

SENATOR BARNES: You're welcome.

SENATOR D'ALLESANDRO: Always good to hear your questions.

SENATOR BARNES: Well, I appreciate that.

SENATOR D'ALLESANDRO: I'm enamored by the consistency, –

SENATOR BARNES: The “love” is flowing back and forth, and the answer is?

SENATOR D'ALLESANDRO: – the quality, and the depth of perception. The amount of money that we have into this system is given to us by the reports given to the Fiscal Committee, and it seems to me right now we have about three or four million dollars paid out. But we have allocated in excess of 20 million for the system. Remember, the system is a hardware and software purchase.

SENATOR BARNES: Mm-hm. So the answer is between three and four million dollars has already been spent on this program.

SENATOR D'ALLESANDRO: I'd love to get you a very accurate report, I'll get that –

SENATOR BARNES: No, that's close enough.

SENATOR D'ALLESANDRO: – from Commissioner Toumpas. Yes.

SENATOR BARNES: Thank you very much, Senator.

SENATOR D'ALLESANDRO: You're very welcome, Sen. Barnes.

**The question is on the adoption of Committee Amendment 1202s.
Committee Amendment 1202s adopted.**

**The question is on the adoption of Ought to Pass as Amended
on HB 1367.**

**Motion of Ought to Pass as Amended adopted, bill ordered to Third
Reading.**

Sen. Gatsas is in opposition to HB 1367.

HB 1412, establishing a commission to study appointing or contracting with a fleet manager for state-owned motor vehicles. Finance Committee. Ought to Pass with Amendment, Vote 7-0. Senator Janeway for the committee.

Senate Finance

April 3, 2008

2008-1226s

06/09

Amendment to HB 1412

Amend RSA subparagraph I(b) as inserted by section 2 of the bill by replacing it with the following:

(b) One member of the senate, appointed by the president of the senate.

Amend the bill by replacing section 3 with the following:

3 Duties. The commission shall:

I. Study the feasibility of appointing or contracting with a fleet manager for state-owned motor vehicles.

II. Review the results of the fleet management performance audit and, where appropriate, incorporate the findings and recommendations of the audit in the final report of the commission.

SENATOR JANEWAY: Thank you, Madam President. I move House Bill 1412 ought to pass with amendment. This bill establishes a commission to study the feasibility of appointing or contracting with a fleet manager

for State-owned vehicles. Since the performance audit of the State's fleet management is currently underway, with an expected completion date of September, the amendment instructs the commission to review the results of the audit and, where appropriate, incorporate the findings and recommendations of the audit into the final report of the commission. The amendment also does the usual by reducing the count of Senate members from three to one. The Finance Committee asks your support for the motion of ought to pass as amended. Thank you.

The question is on the adoption of Committee Amendment 1226s.

Committee Amendment 1226s adopted.

The question is on the adoption of Ought to Pass as Amended on HB 1412.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

HB 1485, relative to state reimbursement under the housing security guarantee program. Finance Committee. Ought to Pass, Vote 6-0. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you, Madam President. I move House Bill 1485 ought to pass. This bill was brought forward as a result of a problem discovered during a Fiscal Committee meeting when there was a need for the Legislature to make a transfer to the Housing Security Guarantee Program. We weren't able to make the transfer because, as the law was written, the reimbursement was limited to the end of the fiscal year. This bill removes that restriction, allowing the treasurer to make the transfer as it may be needed. The Finance Committee asks your support for the motion of ought to pass. Thank you, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on HB 1485.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 1533, relative to the office of the state treasurer. Finance Committee. Ought to Pass, Vote 6-0. Senator Janeway for the committee.

SENATOR JANEWAY: Thank you, Madam President. I move House Bill 1533 ought to pass. This bill was requested by the State Treasurer to make various technical changes to the laws governing the authority and duties of the State Treasurer. The Treasurer told the Finance Committee that the Treasury Office had been keeping a list of statutes in need of updating for some years. This bill represents the culmination of that work. The changes add consistency, provide clarity and correct language that wasn't entirely accurate, including references to the Treasurer as "he." Apparently it hadn't occurred to the drafters that a woman ever would occupy that position. We've come a long way. The Finance Committee asks your support for the motion of ought to pass. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on HB 1533.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 1652-FN-A, relative to the state obligation for payment of the non-federal share of FEMA public assistance and making an appropriation therefor. Finance Committee. Ought to Pass, Vote 7-0. Senator Hassan for the committee.

SENATOR HASSAN: Thank you, Madam President. I move House Bill 1652 ought to pass. This bill makes an additional appropriation for payment of the non-federal share of FEMA public assistance received in response to flood damage sustained in May of 2006 and April of 2007. Deputy Commissioner of Safety Earl Sweeney told the Senate Finance Committee that the Governor's Office worked together with the Division of Homeland Security and Emergency Management to craft the amendment that the House adopted. The amendment was necessary because some of the expenses estimated by FEMA for the 2006 and 2007 floods were less than the actual costs are turning out to be. In addition, some of the recovery projects have turned out to be more complex than originally thought. So it was necessary to amend the bill to change the lapse dates. The money that is appropriated in this bill is to help the cities and towns that were affected by the floods. This meets the State's share of the 25 percent match put up by the cities and towns in order to receive the FEMA funds. The Finance Committee asks your support for the motion of ought to pass. Thank you.

(The Chair recognized Sen. Gatsas to speak.)

SENATOR GATSAS: Thank you, Madam President. I rise in support of the legislation. It only took 11 months for people to understand that we had to pay the communities. When I asked the question, and I believe there was a bill that came forward to take care of it in the budget session, that piece of legislation was voted down. I asked why there weren't funds put in for specials for the 2009 year, 'cause it was only 600,000, and were we going to pay or renege on our deals for the cities and towns. We're at least now coming up and paying for it. I guess I assume, where there was only \$600,000 in the budget remaining, that the balance of this money is going to come from the \$33 million that we tried to put in the Rainy Day fund. 'Cause there certainly doesn't appear that there's any more money that's available to be drawn. So a 11-month wait, we've now appropriated the money, and we've appropriated it from funds from 2007. So I rise in support, and hopefully these communities will get the money a lot quicker, and certainly it's 12 ½ percent less than what we did for the communities on the western part of the state when we gave them everything but \$5,000. So this is a little different for the other communities where they're only getting 87 ½ percent. But I applaud for at least coming forward 11 months later. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on HB 1652-FN-A.

A roll call was requested by Sen. Hassan.

Recess/Out of Recess.

The question is on the adoption of committee recommendation of Ought to Pass on HB 1652-FN-A.

The roll call request was seconded by Sen. Letourneau.

The following Senators voted Yes: Gallus, Reynolds, Kenney, Sgambati, Burling, Cilley, Janeway, Odell, Roberge, Kelly, Bragdon, Gottesman, Foster, Clegg, Larsen, Barnes, DeVries, Letourneau, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.

The following Senators voted No: None.

Yeas: 24 - Nays: 0

Motion of Ought to Pass adopted, bill ordered to Third Reading.

MOTION TO REMOVE FROM THE TABLE

Sen. Burling moved to have HB 233-FN-A removed from the table.

Motion adopted.

HB 233-FN-A, specifying compensation for ballot law commissioners.

The question is on the adoption of Floor Amendment 1411s.

Sen. Burling, Dist. 5

April 17, 2008

2008-1411s

05/04

Floor Amendment to HB 233-FN-A

Amend the title of the bill by replacing it with the following:

AN ACT authorizing mileage for ballot law commissioners and members of the installation standards board.

Amend the bill by replacing all after the enacting clause with the following:

1 Ballot Law Commission; Compensation. Amend RSA 665:4 to read as follows:

665:4 Compensation. The commissioners shall receive [~~such compensation for their services as shall be approved by the governor and council~~] ***reimbursement for mileage at the same rate provided for state employees.*** All bills for supplies required by the commission, necessary expenses of the commissioners, and fees of witnesses summoned by the commission shall be paid by the state upon the approval of the governor and council.

2 New Section; Manufactured Housing Installation Standards; Compensation and Expenses. Amend RSA 205-D by inserting after section 2 the following new section:

205-D:2-a Compensation and Expenses. The members of the board shall each be allowed their mileage and necessary traveling expenses incurred in carrying out their official duties.

3 Effective Date. This act shall take effect 60 days after its passage.

2008-1411s

AMENDED ANALYSIS

This bill authorizes mileage compensation for ballot law commissioners and members of the installation standards board.

Sen. Burling withdrew Floor Amendment 1411s.

Sen. Burling offered a floor amendment.

Sen. Burling, Dist. 5

April 17, 2008

2008-1414s

05/04

Floor Amendment to HB 233-FN-A

Amend the title of the bill by replacing it with the following:

AN ACT authorizing mileage for ballot law commissioners and members of the installation standards board.

Amend the bill by replacing all after the enacting clause with the following:

1 Ballot Law Commission; Compensation. Amend RSA 665:4 to read as follows:

665:4 Compensation. The commissioners shall receive [~~such compensation for their services as shall be approved by the governor and council~~] ***reimbursement for mileage at the same rate provided for state employees.*** All bills for supplies required by the commission, necessary expenses of the commissioners, and fees of witnesses summoned by the commission shall be paid by the state upon the approval of the governor and council.

2 New Section; Manufactured Housing Installation Standards; Compensation and Expenses. Amend RSA 205-D by inserting after section 2 the following new section:

205-D:2-a Mileage Reimbursement. The members of the board shall receive reimbursement for mileage at the same rate provided for state employees in carrying out their official duties.

3 Effective Date. This act shall take effect 60 days after its passage.

2008-1414s

AMENDED ANALYSIS

This bill authorizes mileage reimbursement for ballot law commissioners and members of the installation standards board.

SENATOR BURLING: I think we've got this right now. This clearly speaks to mileage reimbursement for the Ballot Law Commission and the members of the Manufactured Housing Board. The earlier language for the Manufactured Housing Board has been removed, and the phrase "shall receive reimbursement for mileage at the same rate provided for state employees." I don't know why we had that trouble the first 'round, but we've got it right this time.

The question is on the adoption of Floor Amendment 1414s.

Floor Amendment 1414s adopted.

The question is on the adoption of Ought to Pass as Amended on HB 233-FN-A.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

HB 1447-FN, relative to Medicaid for employed adults with disabilities. Health and Human Services Committee. Ought to Pass, Vote 2-0. Senator Sgambati for the committee.

SENATOR SGAMBATI: Thank you, Madam President. I move House Bill 1447 ought to pass. The bill codifies state policy, existing state policy, and reinstates regulations that were removed from rules by JLCAR about eight to ten years ago. House Bill 1447 makes three changes in the Medicaid for Employed Adults with Disabilities program. The first change relates to the definition of "self-employment" for the purposes of meeting eligibility; to allow self-employed people who learn less than the minimum wage to participate. The second change allows a person who can no longer work to retain their protected resources rather than meeting the resource standards for other Medicaid eligibility categories. And the third change provides a choice of options for those who are eligible for both needs in other categories of Medicaid. The Department stated that the fiscal impact of these changes could be absorbed. Clearly, people with disabilities who want to work deserve our support, so the Health and Human Services Committee asks for your support of House Bill 1447 by voting ought to pass. Thank you, Madam President.

The question is on the adoption of the committee recommendation of Ought to Pass on HB 1447-FN.

A roll call was requested by Sen. Burling, seconded by Sen. Hassan.

The following Senators voted Yes: Gallus, Reynolds, Kenney, Sgambati, Burling, Cilley, Janeway, Odell, Roberge, Kelly, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, DeVries, Letourneau, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.

The following Senators voted No: None.

Yeas: 24 - Nays: 0

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 159, establishing an interbranch criminal and juvenile justice council. Judiciary Committee. Ought to Pass with Amendment, Vote 4-0. Senator Reynolds for the committee.

Senate Judiciary

April 8, 2008

2008-1305s

04/09

Amendment to HB 159

Amend RSA 651-E:2, I(m) as inserted by section 1 of the bill by replacing it with the following:

(m) The administrative judge of the district court, or designee.

Amend RSA 651-E:2, I as inserted by section 1 of the bill by inserting after subparagraph (m) the following new subparagraph and renumbering the original subparagraphs (n)-(u) to read as subparagraphs (o)-(v), respectively:

(n) The administrative judge of the judicial branch family division, or designee.

SENATOR REYNOLDS: Thank you, Madam President. I move HB 159 ought to pass with amendment. House Bill 159 was introduced to reestablish the Interbranch Criminal and Juvenile Justice Council. When this council was previously in existence, it provided an excellent mechanism for the various branches to better understand each other and a means to better work together on shared issues that affect all three branches of government. The committee amendment merely changes the representative for the District Court and Family Division to allow for a person to represent each, since these will be moving to separate entities as the Family Division is enacted statewide. The Judiciary Committee recommends that HB 159 be adopted as amended, and asks for your support. Thank you.

The question is on the adoption of Committee Amendment 1305s. Committee Amendment 1305s adopted.

The question is on the adoption of Ought to Pass as Amended on HB 159.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

HB 589-FN, relative to the calculation of concurrent and consecutive terms of imprisonment. Judiciary Committee. Ought to Pass with Amendment, Vote 3-0. Senator Gottesman for the committee.

Sen. Foster, Dist. 13
March 28, 2008
2008-1146s
04/09

Amendment to HB 589-FN

Amend RSA 651:20, I(a) as inserted by section 1 of the bill by replacing it with the following:

(a) Any person sentenced to state prison *for a minimum term of 6 years or more* shall not bring a petition to suspend sentence until such person has served at least 4 years or 2/3 of his minimum sentence, whichever is greater, and not more frequently than every 3 years thereafter. *Any person sentenced to state prison for a minimum term of less than 6 years shall not bring a petition to suspend sentence until such person has served at least 2/3 of the minimum sentence, or the petition has been authorized by the sentencing court. For the purposes of this subparagraph:*

(1) For concurrent terms of imprisonment, the minimum term shall be satisfied by serving the longest minimum term imposed, and the maximum term shall be satisfied by serving the longest maximum term.

(2) For consecutive terms of imprisonment, the minimum terms of each sentence shall be added to arrive at an aggregate minimum term, and the maximum terms of each sentence shall be added to arrive at an aggregate maximum term.

SENATOR GOTTESMAN: Thank you, Madam President. I move House Bill 589-FN ought to pass with amendment. House Bill 589 was introduced to establish a method for calculation of minimum and maximum concurrent and consecutive terms of imprisonment in order to accommodate petitions for sentence suspensions. Because of confusing language currently in statute, the State has had the situation where some individuals who have to serve multiple terms of imprisonment are never able to reach the point where they are considered to have served the minimum sentence. This removes an incentive to even try to achieve parole. Under this legislation the shortest sentences would be added together to achieve the minimum sentence, and the longest sentences would be added together to achieve the maximum sentence. The committee amendment addresses those inmates who are serving time for less severe crimes who can fall into a place where they are never allowed to seek a suspension, which longer-sentenced inmates who committed more serious and dangerous crimes can do. The amendment addresses this inequity. The Judiciary Committee recommends that House Bill 588 [sic]-FN be adopted as amended, and asks for your support. Thank you.

**The question is on the adoption of Committee Amendment 1146s.
Committee Amendment 1146s adopted.**

The question is on the adoption of Ought to Pass as Amended on HB 589-FN.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

HB 1130, relative to repealed DWI laws. Judiciary Committee. Ought to Pass, Vote 4-0. Senator Clegg for the committee.

SENATOR CLEGG: Thank you, Madam President. I move House Bill 1130 ought to pass. House Bill 1130 was introduced to correct a misinterpreta-

tion of the Legislature's intent when the DWI statutes were rewritten a few years ago. Some clever defense attorneys are using the argument that because we repealed the old DWI statutes, their clients cannot be convicted of a repeat offense. Clearly, this was never the intent of the Legislature when those statutes were updated. At the request of the Attorney General's Office, House Bill 1130 was filed to clarify that whether someone was convicted under the old statutes or the newly codified DWI statute, a repeat offense is just that, a repeat offense, and the higher penalty should be imposed. The Judiciary Committee recommends that House Bill 1130 be adopted and asks for your support. Thank you.

(The Chair recognized Sen. Barnes for a question of Sen. Clegg.)

SENATOR BARNES: Sen. Clegg, it's my understanding that passing this piece of legislation does nothing to loosen up the very strict DWI laws that we have in the State of New Hampshire; is that correct?

SENATOR CLEGG: That's correct. It does exactly the opposite; it maintains the intent of the Legislature that a second offense is a second offense, no matter what number was sitting in the statutes that said you couldn't drive and drink.

SENATOR BARNES: Thank you very much, Senator.

The question is on the adoption of committee recommendation of Ought to Pass on HB 1130.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 1132, creating an exception to the wiretapping statute for a recording device used in conjunction with a TASER or other similar electroshock device. Judiciary Committee. Ought to Pass with Amendment, Vote 4-0. Senator Letourneau for the committee.

Sen. Foster, Dist. 13

March 28, 2008

2008-1145s

04/01

Amendment to HB 1132

Amend RSA 570-A:2, II (1) as inserted by section 1 of the bill by replacing it with the following:

(1) A law enforcement officer in the ordinary course of the officer's duties using any device capable of making an audio or video recording, or both, and which is attached to and used in conjunction with a TASER or other similar electroshock device. Any person who is the subject of such recording shall be informed of the existence of the audio or video recording, or both, and shall be provided with a copy of such recording at his or her request.

SENATOR LETOURNEAU: Thank you, Madam President. I move House Bill 1132 ought to pass with amendment. House Bill 1132 creates an exception to the wiretapping statute for a recording device used in conjunction with a TASER or other similar electroshock device. The newer TASERs can be purchased with a camera that will record up to 90 minutes of sound and picture. The ability for law enforcement to have these more state-of-the-art devices provides a liability protection to both law enforcement and the public, much in the same way that the police dashboard cameras are documenting events. The committee amendment provides that any person who is subject to such a recording shall be informed of the existence of such an audio or video recording, or both,

and shall be provided with a copy at his or her request. The Judiciary Committee recommends that House Bill 1132 be adopted as amended, and asks for your support. Thank you.

The question is on the adoption of Committee Amendment 1145s. Committee Amendment 1145s adopted.

The question is on the adoption of Ought to Pass as Amended on HB 1132.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

HB 1622-FN-A, allowing counties to implement a first-time offender alcohol and substance treatment program, requiring the department of justice to administer grants to counties for such program, and making an appropriation therefor. Judiciary Committee. Interim Study, Vote 4-0. Senator Foster for the committee.

SENATOR FOSTER: Thank you, Madam President. I move HB 1622-FN-A be referred to interim study. House Bill 1622-FN-A sought to establish first-time offender alcohol and substance treatment programs statewide. This program is already available, apparently, in Merrimack County. Unfortunately, no one showed up at the public hearing to testify at all. There was one individual who signed up in favor and did not even wish to speak, although she did shed some light on the bill. But in light of the lack of public testimony one way or the other, we couldn't decide whether it was a good idea or a bad idea, and therefore the Judiciary Committee recommends that HB 1622 be referred to interim study and asks for your support.

Recess/Out of Recess.

The question is on the adoption of committee recommendation of Refer to Interim Study on HB 1622-FN-A.

MOTION TO TABLE

Sen. Hassan moved to have HB 1622-FN-A laid on the table.

Motion adopted.

LAIID ON THE TABLE

HB 1622-FN-A, allowing counties to implement a first-time offender alcohol and substance treatment program, requiring the department of justice to administer grants to counties for such program, and making an appropriation therefor.

HB 1168, relative to acceptance of property donated to towns and village districts. Public and Municipal Affairs Committee. Ought to Pass, Vote 3-2. Senator Hassan for the committee.

SENATOR HASSAN: Thank you, Madam President. I move that House Bill 1168 ought to pass. This bill requires selectmen or board of commissioners to hold public hearings on the acceptance of gifts to the municipality valued at \$5,000 or more, and requires notice of gifts valued at less than \$5,000 if no public meeting is held. Currently, those thresholds are \$500. At the Committee hearing it was noted that the bill came at the suggestion of the Goffstown Board of Selectmen and that this change is a sensible one. The Public and Municipal Affairs Committee asks for your support for House Bill 1168. Thank you.

Sen. Cilley offered a floor amendment.

Sen. Cilley, Dist. 6
April 17, 2008
2008-1405s
04/10

Floor Amendment to HB 1168

Amend the title of the bill by replacing it with the following:

AN ACT relative to acceptance of property donated to towns and village districts and extending the time for the city of Rochester to commit to acquiring Skyhaven airport.

Amend the bill by replacing all after section 1 with the following:

2 Operation of Skyhaven Airport by the Pease Development Authority; Contingency. Amend 2007, 342:2 to read as follows:

342:2 Contingency; Operation of Skyhaven Airport by the Pease Development Authority. Notwithstanding the provisions of 1998, 317:1, if the city of Rochester has not legally committed on or before ~~March 1~~ **May 30**, 2008 to acquire Skyhaven airport no later than July 1, 2008, the department of transportation shall negotiate a lease with the Pease development authority for operation of the Skyhaven airport, with the approval of the long range capital planning and utilization committee and the governor and council. The lease shall be completed by July 1, 2008.

3 Effective Date.

I. Section 1 of this act shall take effect 60 days after its passage.

II. The remainder of this act shall take effect upon its passage.

2008-1405s

AMENDED ANALYSIS

This bill:

I. Requires selectmen or board of commissioners to hold public hearings on the acceptance of gifts to the municipality valued at \$5,000 or more.

II. Requires notice of gifts valued at less than \$5,000 if no public meeting is held.

III. Extends the time for the city of Rochester to commit to acquiring Skyhaven airport.

SENATOR CILLEY: Madam President, I would like to offer up a floor amendment.

PRESIDENT LARSEN: You may offer that and speak to it as it's being distributed.

SENATOR CILLEY: Thank you. Madam President, this is Floor Amendment 1405s. This is to correct a problem that has arisen. Some of my colleagues may recall that I sponsored on behalf of the community of Rochester a bill last year to extend the date by which they would have to make a decision on Skyhaven Airport, which is in their district, to be turned over to the State or to be accepted by the community. That bill passed the Senate with a July 1st date of this year. We didn't have any problem, I don't believe there was any debate about it. When it got to the House, the House amended it and brought the date up. And I had explained to the Committee at the time that there was time needed to do studies that were going on and so on. Nevertheless, there was a March 1st date imposed. Since that time the council in Rochester has met now several times on this issue. There was a vote taken in February, but they were missing at that time two councilors and the vote was 6-6. On Tuesday of this week there was a new vote taken with all of the council-

ors in position; that vote was 9-4 to accept the Skyhaven Airport. And so this is simply to – you know, I've been asked on behalf of the community to extend that deadline. I feel that it's a courtesy for the local officials there. And so I would ask my colleagues to please support this with me. Thank you, Madam President.

(The Chair recognized Sen. Gatsas for a question of Sen. Cilley.)

SENATOR GATSAS: Senator, wouldn't it make sense that we would also extend from the time of the lease, 'cause that only gives them 30 days to negotiate that lease for July 1st, if for some reason the May 30th date ...

SENATOR CILLEY: The May 30th date was only for them to make a decision about whether they wanted to accept it. I believe they will have until at least July 1 with the Department of Transportation.

SENATOR GATSAS: But I guess my question is, does that give them enough time for the month of June to negotiate a lease? 'Cause it's gotta be done by July 1st. Where you were giving 'em prior from March to July 1st to do that; you had April-May-June, three months, 90 days to negotiate that lease; now you're down to just 30.

Recess/Out of Recess.

(The Chair recognized Sen. Cilley to respond to the pending question.)

SENATOR CILLEY: And thank you, Sen. Gatsas, for the question. With us today is Ken Ortmann, he's the director of Planning and Development in Rochester, and he assures me that this date will, first of all, nullify the whole issue of the lease that was in the original bill, and if there was a discussion of a lease with DOT, that his department will have ample time to get started on that.

SENATOR GATSAS: All right, thank you.

SENATOR CILLEY: Thank you.

(The Chair recognized Sen. Kenney to speak.)

SENATOR KENNEY: Thank you, Madam President. I'm always in support of local control and local oversight when it comes to situations of this nature. Having served three years on the Skyhaven Airport Operations Commission, I've learned a lot about the Skyhaven Airport, a lot about aeronautics, a lot about that particular airport when it comes to the economic development and the potential that it has for the region. One of the things that I did earlier on was attend the last meeting at the end of February, when it was a 6-6 vote. The 6-6 vote, as you know, nullified the fact that the City of Rochester would take over the airport. And subsequently what happened was there was a change in the board configuration because, as indicated by Sen. Cilley, there was two vacancies and they had filled those vacancies, and so it was basically a "musical chairs" on the city council in Rochester, which in essence has changed the political dynamics in Rochester. But I will say that at the end of February there was a lot of taxpayers' groups who were there who were adamantly opposed to having that airport fall into the lap of the City of Rochester. Now, I respect that vote of 9-4 that was taken a few nights ago, and they have made a new direction in Rochester. And I support local control. But I also think that we are now, the Legislature, back involved in this process by trying to change the dates. I've always believed in transparency and having an informational meeting back into Rochester, whether it be one of our committees, just to air this out with the public is not necessarily a bad thing. I respect the vote, I believe in

local control. But I also know, I was involved with the ED&A Committee a few nights ago in Rye where we had a informational hearing on House Bill 65. Now, if I had not gone to that informational hearing on House Bill 65, I wouldn't have been aware of all the opposition there was for the PDA to suddenly have the ability to appoint the port director under that legislation, or the fact that they could extend leases out over seven years.

I guess my point is this, is that the more that we have transparency in information that is brought to us, the better understanding that we're going to have with the dynamics with residents of that area. I'm in support of what Sen. Cilley is trying to do, but I would hope that we have more informational discussion on this topic, because I don't want to see what happened in Rye, you know – what I should say is what happened in Rye should happen in Rochester, that there be full public disclosure on what's happening. This came up at the last minute. I'm not sure the public was aware in that area of this type, you know, political action. They are today, obviously, but I think obviously there's going to be a lot more input with the City of Rochester when it comes to this airport. Thank you, Madam President.

(The Chair recognized Sen. D'Allesandro to speak.)

SENATOR D'ALLESANDRO: Thank you, Madam President. Madam President, I rise in support of Floor Amendment 1405s, and I commend Sen. Cilley for responding as quickly as possible to the needs of a constituency and once more manifesting local control. We deferred on many occasions to Sen. Green when it came to a Rochester situation. We did that repeatedly, and it seems to me that we're doing the right thing at the right time. The people of Rochester have spoken, they've spoken through their counsel; their counsel wants this action taken, and we're addressing the action at the appropriate time. It just makes a great deal of sense to me that we move forward and respect the wishes of the Spaulding Red Raiders of Rochester and do great things for the "American Dream." Thank you, Madam President.

(The Chair recognized Sen. Barnes to speak.)

SENATOR BARNES: Sen. Cilley has done what we all are up here for, representing her constituents, and I'm going to vote with her on this amendment. And if the people in Rochester aren't happy, they'll express that in November. (Laughter)

The question is on the adoption of Floor Amendment 1405s.

Floor Amendment 1405s adopted.

The question is on the adoption of Ought to Pass as Amended on HB 1168.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

Sen. Barnes is in opposition to HB 1168.

Luncheon Recess/Out of Recess

AFTERNOON SESSION

COMMITTEE REPORTS, RESUMED

HB 1181, naming the Manchester district courthouse the Armand Capistran district courthouse. Public and Municipal Affairs Committee. Ought to Pass, Vote 4-0. Senator Roberge for the committee.

SENATOR ROBERGE: Thank you, Madam President. I move House Bill 1181 ought to pass. This bill names the Manchester District Courthouse the "Armand Capistran District Courthouse." Armand Capistran was a justice of the Manchester District Court from 1975 to 1995. In Committee several people spoke highly of his conduct and skill in the courtroom, noting things such as his ability to find the truth and give everyone a fair chance to present their argument. The Public and Municipal Affairs Committee asks your support for House Bill 1181. Thank you.

(The Chair recognized Sen. D'Allesandro to speak.)

SENATOR D'ALLESANDRO: Thank you, Madam President. I rise in support of House Bill 1181. As Sen. Roberge pointed out, Armand Capistran was a rather unique individual. He was appointed District Court Judge in Manchester by Governor Walter Peterson, and I believe that he was one of the first Franco-Americans appointed to the bench. "Cappy" had a magnificent way of dealing with cases, rather unique in and of itself, I would say. My lawyer friends here who appeared before Judge Capistran know of that, but he really did do, in his own way, a very nice job for the people of the City of Manchester. The Capistran Family, well-known. His brother worked for the post office, his brother was the postman who delivered my mail for a number of years before he retired. And one could never say that the Manchester District Court wasn't an exciting place with Armand Capistran behind the bench. Thank you, Madam President.

The prime sponsor of the bill, Rep. Simon, is in the audience, Tony Simon of Manchester from Ward 4, distinguished Representative. (Applause)

The question is on the adoption of committee recommendation of Ought to Pass on HB 1181.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 1191, relative to environmental investigations in tax lien and tax sale proceedings. Public and Municipal Affairs Committee. Ought to Pass, Vote 5-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Madam President. I move that House Bill 1191 ought to pass. This bill clarifies the authority for conducting environmental investigations prior to, or in conjunction with, tax lien and tax sale proceedings. The legislation is a technical correction to reference the correct RSA regarding this tax issue. This is a request of the New Hampshire Tax Collectors' Association. The Public and Municipal Affairs Committee asks for your support. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on HB 1191.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 1247, relative to revolving accounts for public, educational, and governmental access to cable. Public and Municipal Affairs Committee. Ought to Pass, Vote 4-0. Senator Roberge for the committee.

SENATOR ROBERGE: Thank you, Madam President. I move House Bill 1247 ought to pass. This bill allows municipalities to establish revolving accounts to provide access to cable for public educational and governmental use. This legislation is enabling and offers cities and towns another option in which they can use the money collected in a revolving fund. The Public and Municipal Affairs Committee asks for your support. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on HB 1247.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 1259, authorizing communities to establish municipal housing commissions and affordable housing revolving funds. Public and Municipal Affairs Committee. Ought to Pass, Vote 4-0. Senator Sgambati for the committee.

SENATOR SGAMBATI: Thank you, Madam President. I move House Bill 1259 ought to pass. This enabling legislation authorizes communities to establish housing commissions and affordable housing revolving funds. These housing commissions will be under the authority of the local governing body and be allowed to collect grant money and administer an affordable housing fund. The municipalities may also hold the property in their name in order to facilitate affordable housing transactions and serve as an advocate for local housing issues. The bill is enabling, and the Public and Municipal Affairs Committee requests your support for House Bill 1259. Thank you, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on HB 1259.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 1307, making technical corrections to town audit and reporting requirements. Public and Municipal Affairs Committee. Ought to Pass with Amendment, Vote 4-0. Senator Barnes for the committee.

Public and Municipal Affairs

April 3, 2008

2008-1230s

08/10

Amendment to HB 1307

Amend RSA 76:10, II as inserted by section 3 of the bill by replacing it with the following:

II. If the municipal tax collector finds a discrepancy of ½ of one percent or more between the amount of the warrant as committed to the tax collector of the municipality and the total property tax commitment calculated by the commissioner of revenue administration, based on the pertinent information provided by the municipality under RSA 21-J:34, the collector shall return the warrant to the municipality's assessing officials for correction. If a correction cannot be made to generate a warrant with less than ½ percent discrepancy, the assessing officials shall submit a revised property summary inventory of valuation form as required under RSA 21-J:34, I, for recalculation of the tax rate by the commissioner of revenue administration. The municipality shall not issue property tax bills until such discrepancy is resolved.

SENATOR BARNES: Thank you, Madam President. I move that House Bill 1307 ought to pass with amendment. This bill makes technical corrections to town audit and reporting requirements, and also requires municipalities to have their tax rate recalculated after determination of a discrepancy in the warrant. The amendment corrects a minor drafting error. These housekeeping changes will bring added clarity to municipalities and assist the Department of Revenue Administration. The Public and Municipal Affairs Committee asks you for your support in passing this piece of legislation. Thank you.

**The question is on the adoption of Committee Amendment 1230s.
Committee Amendment 1230s adopted.**

**The question is on the adoption of Ought to Pass as Amended
on HB 1307.**

**Motion of Ought to Pass as Amended adopted, bill ordered to Third
Reading.**

HCR 11, urging municipalities to establish an annual free tire collection day. Public and Municipal Affairs Committee. Ought to Pass, Vote 5-0. Senator Hassan for the committee.

SENATOR HASSAN: Thank you, Madam President. I move that HCR 11 ought to pass. This House Concurrent Resolution urges municipalities to establish an annual free tire collection day. The Committee agrees that this is a good suggestion for our communities to consider. The correct disposal of unused tires is important to the state's environment and its natural beauty. The Public and Municipal Affairs Committee asks for your support on HCR 11. Thank you.

**The question is on the adoption of committee recommendation
of Ought to Pass on HCR 11.**

Motion of Ought to Pass adopted, resolution ordered to Third Reading.

HB 1595-FN, relative to driver's license renewals by persons engaged in overseas government service. Transportation and Interstate Cooperation Committee. Ought to Pass, Vote 5-0. Senator Kelly for the committee.

SENATOR KELLY: Thank you, Madam President. I move ought to pass on HB 1595-FN. House Bill 1595-FN affords the same courtesy to those New Hampshire residents engaged in overseas service that we currently provide to individuals in military service when they need to renew their driver's license. When any individual is preparing to serve our country overseas, whether in the military or in other government service, we do not need to make their travel preparations even more complicated by not allowing them to renew their driver's license. This commonsense legislation has the support of the Department of Safety. The Transportation and Interstate Cooperation Committee recommends that this legislation be adopted and asks for your support. Thank you.

**The question is on the adoption of committee recommendation
of Ought to Pass on HB 1595-FN.**

**Motion of Ought to Pass adopted, bill ordered to Committee on Finance
(Rule 26).**

HB 1631-FN, relative to the state purchase of biodiesel fuels. Transportation and Interstate Cooperation Committee. Ought to Pass, Vote 5-0. Senator DeVries for the committee.

SENATOR DEVRIES: Thank you, Madam President. I move ought to pass on House Bill 1631-FN. House Bill 1631-FN requires the Commissioner of the Department of Transportation, as well as the Division of Plant and Property Management, to purchase fuels that contain a certain amount of biodiesel. The purchase of biodiesel fuels and heating oil would be used in state buildings and vehicles. These fuels burn more efficiently, more cost-effectively, and with better lubricity than traditional fuels. Additionally, these fuel components can be produced in-state right now as we have 5 million gallons of restaurant waste grease, most of which is going into our landfills, ready and available. Enacting this

legislation will encourage the creation of sustainability of this market, move the state closer to the Governor's 25 & 25 agenda, and fit in with the goals dealing with climate-change concerns. The Transportation and Interstate Cooperation Committee recommends that this legislation be adopted and asks for your support. Thank you.

(The Chair recognized Sen. Clegg to speak.)

SENATOR CLEGG: Thank you, Madam President. I rise in support of the Committee work. If we are, in fact, going to have alternative fuels, then we, the government, have to be the first ones to step up to the plate and actually purchase this fuel. The only way we'll have folks coming out with new and improved methods is to have a market ready and available for them to sell their product to. So I'm in favor of the bill, and in favor of the idea that for once government's putting its money where its mouth is. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on HB 1631-FN.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 1479-FN, relative to sale of tobacco products and the appeals process concerning the seizure of illegal tobacco products. Ways and Means Committee. Ought to Pass, Vote 4-0. Senator Reynolds for the committee.

MOTION TO TABLE

Sen. Reynolds moved to have HB 1479-FN laid on the table.

Motion adopted.

LAI D ON THE TABLE

HB 1479-FN, relative to sale of tobacco products and the appeals process concerning the seizure of illegal tobacco products.

HB 1480, authorizing the commissioner of revenue administration to deny certain tobacco licenses. Ways and Means Committee. Ought to Pass, Vote 4-0. Senator Downing for the committee.

SENATOR DOWNING: Thank you, Madam President. I move HB 1480 ought to pass. The Department of Revenue was responsible for licensure of tobacco manufacturers, wholesalers, sub-jobbers, vending machine operators, retailers and samplers. Current law does not provide a mechanism for the Department to deny a license application. This bill provides that authority in situations where the applicant's license has been previously revoked, or the application is filed as a subterfuge on behalf of another whose license has been previously revoked, or the applicant fails to file security, or the applicant has an outstanding, unpaid, finally determined tax liability, or the applicant has been convicted of a tobacco sales-related crime in this state or another state within the past year. Please join the Ways and Means Committee in voting this bill ought to pass. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on HB 1480.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 173-FN-A, relative to the promotion, acquisition, and retention of a large animal veterinarian in those areas of the state where there is a need, and making an appropriation therefor. Wildlife, Fish and Game, and Agriculture Committee. Ought to Pass, Vote 5-0. Senator Janeway for the committee.

SENATOR JANEWAY: Thank you, Madam President. I move House Bill 173-FN-A ought to pass. Let me emphasize this is about veterinarians, not veterans. This bill shines a light on a critical issue for owners of large animals, primarily cattle and horses, and that is a shortage of veterinarians, especially in the more rural counties: Coos, Carroll, Grafton and Belknap. Basically, this is a circular problem; as there are fewer farms, there's less business for the vets who end up serving larger and larger territories and making less money. As you can imagine, that is not an appealing prospect to newly minted vets who graduate with a lot of debt. So the idea is, in this legislation, is to establish a fund to attract and retain large-animal veterinarians in New Hampshire by offering tuition reimbursement to veterinarians who would agree to practice in these underserved areas and remain so for ten years during which their debt would be paid off. Currently, the sum of a dollar is appropriated, but it does establish the fund and it's eligible to receive funds from any private or public source. So please join the Wildlife, Fish and Game and Agriculture Committee in voting this bill ought to pass. Thank you.

(The Chair recognized Sen. Barnes for a question of Sen. Janeway.)

SENATOR BARNES: Thank you, Senator. This is a very interesting piece of legislation. Would you believe I think that maybe we should do the same thing for MD's to get them up to the areas of the state so we can take care of people as well as animals? Would that be something that maybe we could –

SENATOR JANEWAY: Well, not necessarily the people, but –

SENATOR BARNES: No, obviously not. (Laughter) I didn't mean that, I'm not saying this as a joke; I'm saying –

SENATOR JANEWAY: No.

SENATOR BARNES: – there's a big shortage of MD's in this state.

SENATOR JANEWAY: I believe there are. I mean there's a huge shortage, particularly of family practitioners, and I think I saw a number, 18 vacant slots in Coos County alone. My understanding was that there are some programs underway for that, but I could well be wrong.

SENATOR BARNES: Would you and I be perhaps sponsoring something like that if we were re-elected by the people next time? Would you be willing to do that?

SENATOR JANEWAY: Well, that's getting pretty far out, at least on the "re-elected" question, but – (laughter).

SENATOR BARNES: I was checking to see if you were running.

SENATOR JANEWAY: (Indiscernible comment due to voice overlap) (Laughter).

SENATOR BARNES: Thank you, Senator.

SENATOR JANEWAY: Yes, I would.

SENATOR BARNES: Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on HB 173-FN-A.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 1232, relative to the regulation by the fish and game department of baiting of game birds. Wildlife, Fish and Game, and Agriculture Committee. Ought to Pass, Vote 5-0. Senator Estabrook for the committee.

SENATOR ESTABROOK: Thank you, Madam President. I move House Bill 1232 ought to pass. This bill is a request of the Fish and Game Department to correct an oversight associated with baiting statutes. A Fish and Game conservation officer recently encountered a problem at a district court while prosecuting a turkey-baiting case. It was pointed out that turkey was not a species covered in any of the baiting statutes, as the definition for "game birds" was not mentioned. This legislation clears up that loophole. No one appeared in opposition to the bill, not even one turkey. (Laughter) Please join the Wildlife, Fish and Game and Agriculture Committee in voting this bill ought to pass.

The question is on the adoption of committee recommendation of Ought to Pass on HB 1232.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 1348, relative to the milk producers emergency relief fund. Wildlife, Fish and Game, and Agriculture Committee. Ought to Pass, Vote 5-0. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you, Madam President. I move House Bill 1348 ought to pass. This bill consolidates and makes technical corrections to the two emergency dairy relief bills passed by the Legislature during the last session. One, House Bill 407, was a short-term immediate appropriation, and the second, Senate Bill 235, was a long-range, dedicated fund program. This bill repeals the short-term program which served its purpose. The legislation also allows the Department of Agriculture, Markets and Foods to reclaim any money from the milk producers who go out of business prior to August 10th, 2009. Additionally, it allows any moneys not expended in the short-term bill to be deposited into the General Fund. The fund established in the long-range bill was amended to allow it to accept additional sources of funding from private and public donations. Please join the Wildlife, Fish and Game and Agriculture Committee in voting this bill ought to pass. Thank you, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on HB 1348.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 1451, relative to the transportation of deer by certain persons not issued a deer tag. Wildlife, Fish and Game, and Agriculture Committee. Ought to Pass, Vote 5-0. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you, Madam President. I'm big on Wildlife, Fish and Game. Sen. Gallus gives me all of these prominent positions, and I thank him so much for the service. Thank you, Madam President. I move House Bill 1451 ought to pass. The Department of Fish and Game requested this legislation in order to ensure that all the instances where deer tags were not listed, are listed in statute. This bill would allow the issuance of a special deer tag to adult resident landowners, persons over 68, the holders of lifetime licenses, and children under the age of 16 who do not have a Department-issued tag while deer hunting. Please join the Wildlife, Fish and Game and Agriculture Committee in voting this bill ought to pass. Thank you, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on HB 1451.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 1458, relative to milk producers and hauling and stop charges. Wildlife, Fish and Game, and Agriculture Committee. Inexpedient to Legislate, Vote 3-2. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you, Madam President. I yield to Sen. Foster

(The Chair recognized Sen. Foster.)

MOTION TO TABLE

Sen. Foster moved to have HB 1458 laid on the table.

Motion adopted.

LAID ON THE TABLE

HB 1458, relative to milk producers and hauling and stop charges.

HB 1569-FN, relative to the use of drugs on wildlife. Wildlife, Fish and Game, and Agriculture Committee. Ought to Pass, Vote 5-0. Senator Janeway for the committee.

SENATOR JANEWAY: Thank you, Madam President. I move House Bill 1569-FN ought to pass. This bill is at the request of the Fish and Game Department in response to recent developments related to – well, activities related to the development and registration process for approval of a fertility control drug for deer. “Fertility control” has been a long-sought solution to deer overpopulation. The development and registration of these drugs has been under the jurisdiction of the U.S. Department of Food and Drug. Recently oversight was moved to the EPA. These changes, along with the recent development of science of producing an effective shot, multi-year agent to control pregnancy in deer, has resulted in a nationwide effort to make sure natural resource agencies with stewardship responsibilities for wildlife have the appropriate legislative authority to regulate these drugs. So this bill essentially gives the Fish and Game Department jurisdiction over this. The amended version from the House eliminates any impact on the captive deer industry rehabilitators and animal control officers. So a strange bill to end up the Session with, but please join the Wildlife, Fish and Game, and Agriculture Committee in voting this bill ought to pass. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on HB 1569-FN.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

SB 437, relative to access to voter database information.

Recess/Out of Recess.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 437, relative to access to voter database information.

Sen. Burling moved to concur.

(The Chair recognized Sen. Gatsas to speak.)

SENATOR GATSAS: Thank you, Madam President. I would ask the indulgence of the Senate, if we could put this off until next week. There

are two or three different issues that we're hearing that could be the cost to people looking to buy those lists, and I would just – people in our caucus has asked the question on what that cost might be, and can we find out definitely what it might cost. There were some concerns of what that might be and what some of the concerns – or if there aren't any concerns from the Secretary of State regarding the amendment. So I would ask that we put it off for a week.

The question is on concurrence of House Amendment 1164h to SB 437.

(The Chair recognized Sen. Clegg to speak.)

SENATOR CLEGG: Thank you, Madam President. I, too, have a problem with voting on this today. As I look quickly at the bill, it looks to me that, while it may very well settle a lawsuit between two parties, it in fact increases the cost of that list so high that a regular person will no longer be able to afford it. So, in essence, it keeps the same thing that the court found unconstitutional when we said only the parties could get it. Now we're making it cost roughly \$6500, so while anybody can get it, most everybody can't afford it. So I would like to see if that's exactly the case. Is it a \$6500 list? And is it done so that only the parties can afford it, or only the very wealthy in the state can afford it? I'm not sure. That's the way I read it. So, to me I would have to vote no on this concurrence based on the fact that I think voter lists should be available to anybody and everybody who wants to run for office; it's only fair. Thank you.

(The Chair recognized Sen. Barnes for a question of Sen. Burling.)

SENATOR BARNES: Thank you, Senator. Has this been run by and talked to the Secretary of State about? Because he's involved with this piece of legislation.

SENATOR BURLING: Senator, thank you very much for the question. It appears to me that the Secretary of State has had quite a role in the adoption of the House version of this bill. Because the critical part of this bill, the amendment the House has applied to our bill, is the provision that essentially holds harmless the town clerks of each and every town in the State of New Hampshire. And that has been a theme that the Secretary of State has talked about for some time. I certainly understand the wish to count up the costs, but I'm afraid my answer is the bill is absolutely crystal clear about what the costs are. If I, for instance, as a citizen or voter or independent candidate for Governor, wanted to acquire this list, I could either go to every town in the state and pay \$25 plus 50 cents for each incremental 2500 names, or I could save myself the gas cost and I could go to the Secretary of State's Office and I could acquire the Secretary of State's voter file for \$25 plus 50 cents per thousand names or a portion thereof, in excess of 2500 names. Now, I don't have the number right in my head about how many voters there were in the last election, but whatever that is, it's a simple matter of multiplication to get what the charge to the Secretary of State would be. In addition to that, the House version of the bill, that which they seek concurrence in, is the, what I would call the "hold harmless" charge, the charge of \$25 per town clerk that raises and then returns to the towns the amount of money which they might have gotten had you gone town to town.

SENATOR BARNES: Thank you, Sen. Burling. I have a follow-up if I could be allowed. Would you allow us to put this back a little bit so we can talk to the Secretary of State about what this piece of paper that

we're going to be voting on before we vote on it? We usually, when we have something concerning the Secretary of State, have the courtesy to talk to the Secretary of State who we all trust and have a great deal of admiration for; I think some of us might like to take this up and see Bill Gardner and ask Bill what he thinks of this before we vote on it. Would you be willing to let us do that? If it was up to you?

SENATOR BURLING: If it was up to me. Uh ...

SENATOR BARNES: Just a "yes" or a "no" would do.

SENATOR BURLING: Nothing's ever that simple, Senator, you know that.

SENATOR BARNES: I didn't mean to make it tough.

SENATOR BURLING: I'm just not clear that any delay is going to change the ultimate outcome.

SENATOR BARNES: So the answer is no.

SENATOR BURLING: The answer for me is no.

SENATOR BARNES: Okay. Thank you, Senator.

SENATOR BURLING: But I'm neither the final arbiter nor a member of leadership.

SENATOR BARNES: Then I guess I will ask the President of the Senate if we may put this off till the last part of the day, till the end of it, so we'll have a chance to go talk to our Secretary of State.

PRESIDENT LARSEN: This is the end of the day. But Sen. D'Allesandro requests a two-minute recess.

SENATOR BARNES: Thank you.

Recess/Out of Recess.

The question is on the concurrence of House Amendment 1164h to SB 437.

(The Chair recognized Sen. Foster for a question of Sen. Burling.)

SENATOR FOSTER: It's my understanding that I've heard that, you know, and I suspect as well that maybe – that the Secretary, as stated, is familiar with this legislation, but I was wondering that if we waited a week, whether we could indulge you to ask the Secretary of State to write us a letter as to his position on this piece of legislation so that we would be clear that he supports the process and the costs and everything else involved.

SENATOR BURLING: Senator, I'm very comfortable with that. I'd be delighted to ask the Secretary of State for a letter expressing his position relative to this amendment, and I'll go further and ask what participation he had in the House in crafting this. And if that extra week gives the members who want a little delay a chance to learn more, that would be good, too.

SENATOR BARNES: Sen. Burling, I appreciate you making that effort.

SENATOR BURLING: Happy to do it.

MOTION TO TABLE

Sen. Burling moved to have SB 437 laid on the table.

Motion adopted.

LAIID ON THE TABLE

SB 437, relative to access to voter database information.

RESOLUTION

Sen. Foster moved that the Senate adjourn from the Early Session, that the business of the Late Session be in order at the present time, that all bills and resolutions ordered to Third Reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

Motion to adjourn adopted.

Adjournment from Early Session.

LATE SESSION**Third Reading and Final Passage**

HB 159, establishing an interbranch criminal and juvenile justice council.

HB 173-FN-A, relative to the promotion, acquisition, and retention of a large animal veterinarian in those areas of the state where there is a need, and making an appropriation therefor.

HB 185-FN, relative to economic revitalization zone credits.

HB 233-FN-A, specifying compensation for ballot law commissioners.

HB 399, relative to the minimum hourly rate of compensation.

HB 589-FN, relative to the calculation of concurrent and consecutive terms of imprisonment.

HB 759-FN, relative to administration and enforcement of banking laws.

HB 1130, relative to repealed DWI laws.

HB 1132, creating an exception to the wiretapping statute for a recording device used in conjunction with a TASER or other similar electroshock device.

HB 1168, relative to acceptance of property donated to towns and village districts.

HB 1181, naming the Manchester district courthouse the Armand Capistran district courthouse.

HB 1191, relative to environmental investigations in tax lien and tax sale proceedings.

HB 1232, relative to the regulation by the fish and game department of baiting of game birds.

HB 1240, relative to disqualification of certain election officers and relative to arrangement of polling places.

HB 1247, relative to revolving accounts for public, educational, and governmental access to cable.

HB 1259, authorizing communities to establish municipal housing commissions and affordable housing revolving funds.

HB 1276, establishing a committee to study revisions to the auctioneers' practice act.

HB 1278, relative to the purchase of computer services and supplies for state agencies.

HB 1307, making technical corrections to town audit and reporting requirements.

HB 1335, establishing a commission to study the effects of post-traumatic stress disorder and traumatic brain injury suffered by New Hampshire soldiers and veterans returning from Iraq and Afghanistan.

HB 1348, relative to the milk producers emergency relief fund.

HB 1367, relative to the conversion to a new state financial accounting and statewide budget system.

HB 1382, adopting the uniform prudent management of institutional funds act.

HB 1412, establishing a commission to study appointing or contracting with a fleet manager for state-owned motor vehicles.

HB 1447-FN, relative to Medicaid for employed adults with disabilities.

HB 1451, relative to the transportation of deer by certain persons not issued a deer tag.

HB 1480, authorizing the commissioner of revenue administration to deny certain tobacco licenses.

HB 1485, relative to state reimbursement under the housing security guarantee program.

HB 1533, relative to the office of the state treasurer.

HB 1569-FN, relative to the use of drugs on wildlife.

HB 1591-FN, relative to vehicles traded to automobile dealers.

HB 1631-FN, relative to the state purchase of biodiesel fuels.

HB 1635-FN, relative to permits for motor vehicle salvage facilities and motor vehicle crushers.

HB 1643-FN, relative to medical benefits payment by the retirement system for eligible group I teachers and political subdivision employees in the retirement system.

HB 1652-FN-A, relative to the state obligation for payment of the non-federal share of FEMA public assistance and making an appropriation therefor.

HCR 11, urging municipalities to establish an annual free tire collection day.

HCR 17, encouraging the use of reusable shopping bags.

ANNOUNCEMENTS

SENATOR ROBERGE (Rule 44): Thank you, Madam President. I'd like to mention the passing of Joseph Acorace, a good friend to many of us, and a particularly good friend to me, and some of us – and a lot of us from Manchester and those who have been here in the Senate and the House for many years. Just to mention a couple of the things he did, the many, many groups that he belonged to and many, many good things that he did, but just to name a few that all of us will recognize. He was the chief auditor of the City of Manchester, then he became the finance director and he served there for 18 years. He also served on the Liquor Commission as chairman. He was on the Board of Mayor and Aldermen; he served as an alderman of the former Ward 13, some of us remember when Manchester had a Ward 13. And since 1983 he was a chairman – a member and the chairman of the board of directors of St. Mary's Bank Credit Union. And it goes on for like half a page of other things that he did. But we will all miss him, and thank you very much. And his passing will be remembered by a lot of us, and it saddens us greatly. As I understand, he died on Tuesday evening. Thank you.

SENATOR BURLING (Rule 44): Just a brief 44, if I may. All of the talk about wildlife reminds me that last night, driving from Plymouth to Cornish through Danbury, I had one of those wonderful wildlife moments when a moose, roughly the size of this building – (laughter) – stepped directly in front of my vehicle on Route 4, and a young man ahead of me

in a blue pickup truck and I took to the “boonies” to avoid this creature who watched us go by with some amusement and then strolled on. It is that time of year, they’re out and moving, and everybody, please be safe. ‘Cause I guarantee you, even on a beautiful evening, you can’t see a moose until it’s on your hood ornament.

SENATOR BARNES (Rule 44): Thank you, Madam President. Rule 44. I would like to address a piece of legislation that we had earlier today, make a couple of comments, only a couple of comments, I’ll be quick about it. Number one, there’s an ad on TV that says Dunkin’ – “America Rolls on Dunkin’.” Well, that’s not true, that’s false advertising because America rolls mostly with the union, the teamster’s union who does the rolling and moves American products around. I’m surprised the teamsters haven’t jumped on Dunkin’ Donut for taking credit for having American rolling. I’m concerned about this chamber passing that piece of legislation. My understanding is, and maybe my understanding isn’t too good, that there was an agreement between the workers and the union, a couple of years back, and here this Legislature is stepping in to step on the toes of that agreement. And I don’t think that’s right, I don’t think we belong doing that. And my second concern is that it looks to me like this is a union affair. I gotta admit to you, I’ve never been a member of a union, so I don’t know the inner workings, but I’ve sure been around here long enough to have a lot of conversations with union people, and I thought that this issue that we voted on earlier today was something that the union, that people that pay their dues, the 135 people that work for this Pepsi-Cola plant in Manchester that brought this bill forward, I would have thought their union dues would have been for the union to take care of that situation, not for the State Legislature. So I’m a little disappointed that it came here in front of this body. And I do say there are a lot of great men and women in that organization and they keep America rolling, and Dunkin’ Donuts sure doesn’t. Thank you.

President Larsen moved, without objection, that all Rule 44’s are to be entered into the permanent record.

RESOLUTION

Sen. Foster moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, referring bills to committee, scheduling hearings, sending and receiving messages, processing enrolled bill reports and amendments and forming Committees of Conference.

Motion to recess adopted.

The Senate is in recess to the Call of the Chair.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bills sent down from the Senate:

SB 142, relative to the regulation of real estate brokers and salespersons by the real estate commission.

SB 315, preventing the fraudulent use of the names of financial institutions.

SB 322, relative to lists of professional bondsmen.

SB 325-FN-A, relative to child care provider reimbursement rates.

SB 336-FN, relative to special number plates for veterans who are former prisoners of war.

SB 360, relative to local enforcement of the state building code.

SB 364, relative to vehicle weight tolerance.

SB 366, relative to the operation of the state suggestion and extraordinary service award program.

SB 367, relative to the date of the final property tax bill in municipalities that bill quarterly.

SB 368, relative to exemptions for toxics reduction in packaging.

SB 375-L, allowing veterinarians to inform town and city clerks about dogs that have been euthanized or died during treatment.

SB 404, allowing dental school graduates to practice in an approved dental residency program.

SB 409, relative to conservation and preservation restrictions.

SB 423, relative to cashing of bingo winnings checks.

SB 431, naming a small impoundment in Goffstown as Namaske Lake.

SB 461, relative to accessibility of genealogical records to the public.

SB 498, relative to state guarantees of certain municipal debt issues.

SB 502-FN, relative to unemployment compensation.

SB 520-FN-A, requiring the state veterans council to issue a state veterans handbook biennially and making an appropriation therefor.

SB 521-FN, increasing the maximum scholarship amount available from the national guard scholarship fund.

SB 529, changing certain references in the mental health laws.

SB 534-FN, eliminating the processing fee on court credit card transactions.

SCR 5, urging that federal, state, and local governments work with broadcasters and consumer groups to inform New Hampshire residents of the 2009 digital broadcast conversion.

SCR 8, urging the United States Department of Defense to restore the designations of Prisoner of War and Missing in Action to those servicemen and servicewomen who are missing in operations in Afghanistan and Iraq.

SCR 9, urging Congress to fund a community-based outpatient clinic for veterans in Keene.

HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in the passage of the following entitled Bills sent down from the Senate:

SB 48, relative to removal of appointed highway agents from office.

SB 103-FN-L, establishing a committee to generate and evaluate solutions for maintaining emergency access on class VI and private roads.

SB 329, relative to payment of members of screening panels for medical injury claims.

SB 356-FN, prohibiting offenders against children from participating in or being a spectator at certain activities or events.

SB 365, relative to the commission to study childhood lead poisoning prevention laws, policies, and standards in New Hampshire.

SB 434, relative to providers of electronic communication services and an extension for compliance with the REAL ID Act of 2005.

SB 438, relative to contractor accountability and disclosure in the public works construction procurement process.

SB 493, allowing certain tax exempt organizations to be defined as charitable organizations for purposes of games of chance operations.

SB 503-FN, relative to authorizing temporary registrations of off-highway recreational vehicles for nonresidents.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in its amendments to the following entitled House Bills sent down from the Senate:

HB 1295, establishing a commission to study issues relating to storm-water.

HB 1584-FN-A, creating a commission to study the recycling and disposal of electronic waste.

HOUSE MESSAGE

The House of Representatives has referred for Interim Study the following entitled Bills sent down from the Senate:

SB 300-FN-A, relative to death benefits for corrections officers killed in the line of duty.

SB 316-FN, expanding a death benefit for police officers and firefighters to emergency medical technicians.

April 17, 2008
2008-1363-EBA
03/10

Enrolled Bill Amendment to HB 717

The Committee on Enrolled Bills to which was referred HB 717

AN ACT allowing municipalities to establish local community services and care planning boards.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to HB 717

This enrolled bill amendment corrects certain grammatical and typographical errors.

Enrolled Bill Amendment to HB 717

Amend RSA 678:2, II as inserted by section 1 of the bill by replacing line 1 with the following:

II. "Community services master plan" or "CSMP" means an assessment of the availability,

Amend RSA 678:2, II(c) as inserted by section 1 of the bill by replacing line 2 with the following:

important barriers that must be overcome to achieve each improvement, and an assessment of the

Amend RSA 678:2, IV as inserted by section 1 of the bill by replacing lines 3-4 with the following:

that is adopted by the board for use in its annual assessment and state of the community report and to develop its CSMP. The index may include measures of the health of residents and their quality

Amend RSA 678:4, I(a) as inserted by section 1 of the bill by replacing lines 3-4 with the following:

publish and distribute copies of the community services master plan, or copies of any report relating to the community services master plan, hold public forums and meetings, and employ such other means of publicity and education as it

Amend RSA 678:4, I(b) as inserted by section 1 of the bill by replacing line 3 with the following:

and social services and support systems, and necessary recommendations.

Adopted.

April 18, 2008

2008-1423-EBA

05/10

Enrolled Bill Amendment to HB 740-FN

The Committee on Enrolled Bills to which was referred HB 740-FN AN ACT relative to mental health services.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to HB 740-FN

This enrolled bill amendment corrects a statutory reference.

Enrolled Bill Amendment to HB 740-FN

Amend RSA 135-C:19-a, II-a as inserted by section 2 of the bill by replacing line 3 with the following:

admitted pursuant to RSA 135-C:27 - RSA 135-C:54 and the consent of the person admitted cannot

Adopted.

April 16, 2008

2008-1401-EBA

04/09

Enrolled Bill Amendment to HB 1245

The Committee on Enrolled Bills to which was referred HB 1245 AN ACT relative to insurance department records, investigations, and enforcement.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to HB 1245

This enrolled bill amendment makes 2 references gender neutral.

Enrolled Bill Amendment to HB 1245

Amend RSA 400-A:16, V as inserted by section 1 of the bill by replacing lines 2 and 3 with the following:

of this title for which criminal prosecution is provided, he *or she* shall so inform the attorney general. The attorney general shall promptly institute such action or proceedings against such person as in his *or her*

Adopted.

Out of Recess.

LATE SESSION

Sen. Foster moved that the Senate adjourn from the Late Session.

Motion to adjourn adopted.

Adjournment from the Late Session.

April 24, 2008

The Senate reconvened at 10:00 a.m., a quorum being present.

The Reverend Celeste Hemingson, from St. Paul's Church, guest chaplain to the Senate, offered the prayer:

Gracious God, You have given us a world in which there is enough for everyone. We give You thanks for these, our Senators, who are willing stewards of Your bounty. Enrich them with wisdom, with vision and with compassion, so that in the decisions that they make there will be a world in which everybody has enough. *Amen*

Sen. Clegg led the Pledge of Allegiance.

INTRODUCTION OF GUESTS AND PRESENTATIONS

Salem High School Boys' Basketball Team and coaches, 2008 Class L State Champions.

Salem High School Boys' Volleyball Team and coach, 2008 Class L State Champions.

Salem High School Girls' Volleyball Team and coach, 2008 Division I State Champions.

Salem High School student Trevor Dearden, Division I New England Wrestling Champion.

Salem High School student Alex Piterra, Division I NH State Wrestling Champion.

Brianna Hartford, Youth Volunteer, Prudential Spirit of Community Award recipient.

Senate Page: Callie Simon, Manchester Central High School.

COMMITTEE REPORTS

(The Chair recognized Sen. D'Allesandro.)

SENATOR D'ALLESANDRO: Thank you, Madam President. Madam President, we're going to waive two bills from Finance: **HB 1554-FN**, an act relative to challenges of voters; **HB 1472**, relative to workforce housing.

SPECIAL ORDER

President Larsen moved that, without objection, HB 1601-FN-A be Special-Ordered to the end of the Calendar.

HB 1601-FN-A, relative to funding for certain capital projects of the Pease development authority. Capital Budget Committee. Ought to Pass with Amendment, Vote 4-0. Senator D'Allesandro for the committee.

HB 1352, relative to the comprehensive state development plan. Capital Budget Committee. Ought to Pass with Amendment, Vote 4-0. Senator Kelly for the committee.

Capital Budget

April 15, 2008

2008-1378s

05/10

Amendment to HB 1352

Amend the bill by inserting after section 1 the following and renumbering the original section 2 to read as 3:

2 Comprehensive Development Plan. Amend RSA 9-A:1, V to read as follows:

V. The comprehensive development plan shall be renewed or revised every 4 years, beginning on October 1, 2003, *and the plan transmitted to the general court.*

2008-1378s

AMENDED ANALYSIS

This bill repeals the requirement that the governor transmit the comprehensive development plan to the general court by July 1 of each even numbered year. The bill requires the plan to be transmitted to the general court once every 4 years, following its renewal or revision.

SENATOR KELLY: Thank you, Madam President. I move HB 1352 ought to pass as amended. This bill addresses a situation where we had two statutes that required different and conflicting reporting dates with regard to the Comprehensive State Development Plan. This bill resolves the conflict by repealing RSA 9-A:3. With the repeal of RSA 9-A:3 we inadvertently lost the requirement that the report be transmitted to the Legislature. The committee amendment simply adds that language back into the statute. The Capital Budget Committee recommends that this legislation be adopted as amended and asks for your support. Thank you.

The question is on the adoption of Committee Amendment 1378s.

Committee Amendment 1378s adopted.

The question is on the adoption of Ought to Pass as Amended on HB 1352.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

HB 461, relative to purchasing alliances. Commerce, Labor and Consumer Protection Committee. Inexpedient to Legislate, Vote 6-0. Senator DeVries for the committee.

SENATOR DEVRIES: Thank you, Madam President. I move House Bill 461 inexpedient to legislate. This bill establishes a law governing purchasing alliances which may be formed for the purpose of purchasing health insurance. The Committee learned that House Bill 461 is identical to House Bill 515 which was unanimously voted inexpedient to legislate by this chamber three years ago. The Committee heard testimony that current law has allowed for purchasing alliances since 1999, but no one has taken advantage of it yet. There is also concern that this piece of legislation could adversely affect Senate Bill 540, the New Hampshire HealthFirst bill, which we passed earlier this year. The Commerce, Labor and Consumer Protection Committee asks your support for inexpedient to legislate. Thank you, Madam President.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on HB 461.

Motion of Inexpedient to Legislate adopted.

HB 858-FN, relative to a discount medical plan organization. Commerce, Labor and Consumer Protection Committee. Ought to Pass with Amendment, Vote 6-0. Senator Reynolds for the committee.

Sen. Gottesman, Dist. 12

March 27, 2008

2009-1141s

01/09

Amendment to HB 858

Amend RSA 415-I:3, IV as inserted by section 1 of the bill by replacing it with the following:

IV. "Discount medical plan organization" means an entity that, in exchange for fees, dues, charges, or other consideration, provides access for discount medical plan members to providers of medical or ancillary services and the right to receive medical or ancillary services from those providers at a discount. "Discount medical plan organization" is the organization that contracts with providers, provider networks, or other discount medical plan organizations to offer access to medical or ancillary services at a discount and determines the charge to discount medical plan members. "Discount medical plan organization" does not include a provider that offers discounts to its own patients without any cost or fee of any kind to the patient.

SENATOR REYNOLDS: Thank you, Madam President. I move House Bill 858-FN ought to pass with amendment. This bill was a request of the Insurance Department and establishes registration requirements and operational standards for discount medical plan organizations operating in the state. It also repeals current law relative to prescription discount cards which will now be covered under the provisions of House Bill 858-FN. The Committee was informed that the Insurance Department had received a number of complaints that, under the current program, many consumers believed that the discount card they purchased was actually health insurance coverage. House Bill 858-FN sets up registration requirements and disclosure standards for the existing discount medical plan system so that consumers are aware of the services they are receiving. It also gives the Insurance Department the authority to sanction violations of standards. The Commerce, Labor and Consumer Protection Committee asks your support for ought to pass as amended. Thank you, Madam President.

The question is on the adoption of Committee Amendment 1141s.

Committee Amendment 1141s adopted.

The question is on the adoption of Ought to Pass as Amended on HB 858-FN.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

HB 1244, relative to auditable basis policies. Commerce, Labor and Consumer Protection Committee. Ought to Pass with Amendment, Vote 6-0. Senator Cilley for the committee.

Sen. Gottesman, Dist. 12
April 3, 2008
2008-1225s
01/09

Amendment to HB 1244

Amend the bill by replacing section 1 with the following:

1 Auditable Basis Policies. Amend RSA 412:35 to read as follows:
412:35 Auditable Basis Policies.

I. All workers' compensation policies issued in this state shall be issued on an auditable basis. A final premium shall be charged based upon actual exposure existing during the term of the policy coverage.

II. Audits shall be conducted by either physical inspection of an insured's records and operations, or by telephone or mail request by the insurer to the insured.

III. Audits shall be completed promptly, no more than 120 days after the expiration or cancellation of the policy, provided that there is no bona fide dispute.

IV. In cases where there is a bona fide dispute, the insurer shall notify the insured in writing that there is a bona fide dispute and this notice shall toll the 120-day time period until the dispute is resolved. Upon resolution of the dispute, the insurer shall proceed to complete the audit within the time remaining in the 120-day time period. A bona fide dispute includes the insured's failure to cooperate with the audit, provided the insurer has notified the insured of:

(a) The acts or omissions that constitute the insured's failure to cooperate; and

(b) The consequences of the insured's failure to cooperate, including delay in the completion of the audit.

V. Gross unearned premium shall be returned pursuant to RSA 402:81.

SENATOR CILLEY: Thank you, Madam President. I move House Bill 1244 ought to pass with amendment. This bill clarifies the timeliness and communication requirements associated with auditable basis insurance policies; for example, workers' compensation policies. This bill was requested by the Insurance Department. The Committee heard testimony from the New Hampshire Insurance Department that House Bill 1244 ensures that clear communication takes place between the insurer and the insured. It also provides that audits are conducted promptly unless a bona fide dispute exists. Additionally, House Bill 1244 anticipates and resolves possible problems that can arise by stipulating that audits are completed and refunds are paid to the insured within a certain time-frame. The Commerce, Labor and Consumer Protection Committee asks for your support in ought to pass. Thank you, Madam President.

The question is on the adoption of Committee Amendment 1225s.

Committee Amendment 1225s adopted.

The question is on the adoption of Ought to Pass as Amended on HB 1244.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

HB 1378, relative to insurance taxes and fees. Commerce, Labor and Consumer Protection Committee. Ought to Pass, Vote 6-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Madam President. I move House Bill 1378 ought to pass. This bill is a request of the Insurance Department. The Committee heard testimony from the Insurance Department that the bill would level the playing field by subjecting surplus lines and unauthorized insurers to the same penalty provisions as those currently in place for licensed insurers for the failure to file premium taxes on time. The Commerce, Labor and Consumer Protection Committee asks for your support. Thank you very much.

The question is on the adoption of committee recommendation of Ought to Pass on HB 1378.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 1457, allowing smoking in cigar bars. Commerce, Labor and Consumer Protection Committee. Inexpedient to Legislate, Vote 4-2. Senator Gottesman for the committee.

MOTION TO TABLE

Sen. Gottesman moved to have HB 1457 laid on the table.

The question is on the motion to lay on the table.

A roll call was requested by Sen. Foster, seconded by Sen. Barnes.

The following Senators voted Yes: Reynolds, Burling, Janeway, Odell, Roberge, Kelly, Gottesman, Foster, Larsen, DeVries, D'Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Kenney, Sgambati, Cilley, Bragdon, Clegg, Gatsas, Barnes, Letourneau, Downing.

Yeas: 14 - Nays: 10

Motion adopted.

LAIID ON THE TABLE

HB 1457, allowing smoking in cigar bars.

HB 91-FN, relative to lobbyist registration and statements, repealing the restriction on simultaneous employment and public service, and relative to regulation of volunteer public service. Election Law and Internal Affairs Committee. Ought to Pass with Amendment, Vote 5-0. Senator Cilley for the committee.

Election Law and Internal Affairs

April 16, 2008

2008-1390s

10/04

Amendment to HB 91-FN

Amend the title of the bill by replacing it with the following:

AN ACT relative to lobbyist registration, executive branch ethics, volunteer public service, and legislative financial disclosure forms.

Amend the bill by replacing section 4 with the following:

4 Lobbyist Statements. Amend RSA 15:6, II to read as follows:

II. Lobbyists shall file statements no later than the ~~[second Friday]~~ **last Wednesday** of each ~~[month]~~ **January, April, July, and October** covering all fees received and expenditures, contributions, honorariums, or expense reimbursements made ~~[during the previous month.]~~ **since the last required filing**, from fees received at any time from a lobbying client or employer or from funds otherwise provided by the lobbyist, partnership, firm, or corporation, or from the client or employer. **The first**

statement filed by persons who register as lobbyists pursuant to RSA 15:1, I(a)(3) shall cover all fees received and expenditures or expense reimbursements made from such fees received and funds provided during the 75 hours worked prior to registration.

Amend the bill by replacing all after section 9 with the following:

10 Financial Disclosure; Filing. Amend RSA 15-A:3 to read as follows:
15-A:3 Persons Required to File.

I. The following persons shall file a statement of financial interests as required by this chapter:

~~[I-]~~ ***(a)*** All candidates who file for state or county office.

~~[H-]~~ ***(b)*** All persons filing an acceptance of nomination form for state or county office.

~~[HH-]~~ ***(c)*** Every person appointed by the governor, governor and council, president of the senate, or the speaker of the house of representatives to any board, commission, committee, board of directors, authority, or equivalent state entity whether regulatory, advisory, or administrative in nature.

~~[IV-]~~ ***(d)*** All agency heads.

~~[V-]~~ ***(e)*** Any public official designated, due to the responsibilities of the position, by the agency head.

~~[VI-]~~ ***(f)*** The secretary of state and the treasurer, and any of their subordinates designated, due to the responsibilities of the position, by the secretary of state or treasurer.

~~[VII-]~~ ***(g)*** All persons elected to state or county office, and all persons appointed to such elective office to fill a vacancy; and

~~[VIII-]~~ ***(h)*** Any person, not employed by or working under contract for the state, who is acting on behalf of the governor or an agency while engaged in state business.

II.(a) Any person who is otherwise subject to the filing requirements of paragraph I (h) shall be exempt from filing a statement of financial interests provided the head of the executive branch entity for whom the individual is volunteering certifies in a public register of volunteers, to be maintained by the secretary of state, that the volunteer's work for the state:

(1) Does not directly or indirectly influence the setting of public policy;

(2) Does not directly or indirectly influence decisions on how state funds will be expended; and

(3) Does not directly or indirectly influence the selection of vendors for the state.

(b) The secretary of state shall establish a public register of volunteers for the state that shall include the name and town or city of residence of the volunteer and the executive branch entity for whom the volunteer work is done. The name and residence of exempt volunteers shall not be listed for volunteers who provide service occurring at a single event that does not exceed one day in duration, provided the head of the executive branch entity accepting the volunteer service submits a brief description of the event and an estimate of the number of volunteers to the secretary of state for inclusion in the register.

(c) The head of any executive branch entity that accepts volunteer work shall cause a list of volunteers who qualify for this exemption to be certified to the secretary of state. An annual certification shall be submitted not later than the last Wednesday in January listing all exempt volunteers who are expected to volunteer

during that calendar year. A certification shall be submitted no later than the last Wednesday of each month certifying all new exempt volunteers who started service with that entity during the previous month.

III. The filing of a financial disclosure form by an elected member of the house of representatives or senate pursuant to the guidelines enforced by the legislative ethics committee under RSA 14-B, shall satisfy the requirement for filing of a statement of financial interest pursuant to this chapter.

11 New Paragraph; Legislative Ethics; Filing of Forms. Amend RSA 14-B:3 by inserting after paragraph III the following new paragraph:

IV. The committee shall review all financial disclosure forms required by ethics guidelines and shall place the completed forms on file in the office of the secretary of state for purposes of the requirements of RSA 15-A, in accordance with the filing deadline established under this chapter.

12 Executive Branch Ethics Committee; Appointments. Amend RSA 21-G:29, VI to read as follows:

VI. Committee members shall serve terms of 3 years and until their successors are appointed and qualified. However, initially, the governor shall nominate one member for a one-year term, one member for a 2-year term and one member for a 3-year term; the secretary of state shall nominate one member for a 2-year term, and one member for a 3-year term; the treasurer shall nominate one member for a one-year term and one member for a 2-year term. Initial nominations to the committee shall be made no later than 90 days after the effective date of this section. The initial appointments shall begin on July 1, 2006 and end on June 30 of the appropriate year. Vacancies shall be filled for the remainder of any unexpired term. During their term of appointment, members may not hold or campaign for elective office, serve as an officer of any political party or political committee, permit their names to be used in support of or in opposition to any **state or county** candidate or proposition, participate in any way in any **state or county** election campaign, make a contribution as defined in RSA 664:2 to any **state or county** candidate for office or political committee, or act as or assist a lobbyist required to be registered under RSA 15:1.

13 Executive Branch Volunteer List. Each head of an executive branch entity that accepts volunteer work shall cause a list of volunteers providing service to the state on the effective date of this act who qualify for the exemption set forth in RSA 15-A:3, II to be submitted to the secretary of state within 60 days of the effective date of this act.

14 Effective Date. This act shall take effect 60 days after its passage.

2008-1390s

AMENDED ANALYSIS

This bill

I. Changes the registration requirements for lobbyists and the frequency and content of the statements required to be filed.

II. Repeals the restriction on simultaneous employment and public service.

III. Exempts certain appointed and volunteer service from the financial disclosure requirements.

IV. Establishes an executive branch public register of volunteers.

V. Changes the appointment criteria for the executive branch ethics committee.

VI. Allows legislative financial disclosure forms to satisfy requirements of RSA 15-A.

SENATOR CILLEY: Thank you, Madam President. I move that HB 91-FN ought to pass with amendment. This amended bill changes the registration requirements for lobbyists and the frequency and content of the statements required to be filed; repeals the restriction on simultaneous employment in public service; exempts certain appointed and volunteer services from the financial disclosure arrangements [sic]; establishes an Executive Branch public register of volunteers; changes the appointment criteria for the Executive Branch Ethics Committee; and allows legislative financial disclosure forms to satisfy requirements of RSA 15-A. In the wake of major ethics changes made in the last several years, there have been unintended hardships placed on certain groups such as nonprofits, and participation has been discouraged. This bill seeks to accomplish several goals connected to lobbying and public service, and after extensive and collaborative work done in both the House and the Senate, the Committee agrees that this bill does the job. Several key points are reached with the bill, a clearer definition of "lobbyist" is achieved and required filing is changed from monthly to quarterly. Volunteer service and appointments are more clearly defined, and financial disclosure requirements are exempted in some cases, in the interest of encouraging public participation in various arenas. And the requirements for filing legislative financial disclosure forms are better streamlined in order to eliminate redundancies. The Election Law and Internal Affairs Committee requests your support for the amended bill. Thank you, Madam President.

**The question is on the adoption of Committee Amendment 1390s.
Committee Amendment 1390s adopted.**

(The Chair recognized Sen. D'Allesandro to speak.)

SENATOR D'ALLESANDRO: Madam President, I rise to support the Committee recommendation, but state that because of the bill, the State will lose some money, it will be less than \$10,000, because of the filing fees. But Sen. Burling has mentioned to me that there's a companion piece of legislation that handles that situation and makes it a zero sum gain by increasing the filing fees. Because rather than filing monthly, they're now filing quarterly. So there will be no loss of revenue to the State. Thank you, Madam President.

(The Chair recognized Sen. Burling to speak.)

SENATOR BURLING: Thank you, Madam President. I rise to thank the prior speaker for his noting that. There is, in fact, another bill which contains a doubling of lobbyist filing fees that will more than offset the revenue loss experienced by reducing the number of filings here. Let me just talk for a second about efficiencies. One of the things this bill does is reduce the monthly filings for all lobbyists, which are having the effect of generating a huge weight-loading in the southwest corner of this building, immense amounts of unfilled paper are simply accumulating over there. Going to a quarterly filing requirement is much more sensible; it allows us to have usable information in a timely fashion. This bill has taken more than a year and a half to get to this point, it has been the subject of incredible efforts by a number of people, and I urge the membership to support it. Thank you.

The question is on the adoption of Ought to Pass as Amended on HB 91-FN.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

HB 285, relative to voting machines. Election Law and Internal Affairs Committee. Ought to Pass with Amendment, Vote 5-0. Senator Cilley for the committee.

Election Law and Internal Affairs

April 16, 2008

2008-1387s

03/04

Amendment to HB 285

Amend the bill by replacing all after the enacting clause with the following:

1 Electronic Ballot Counting Device Advisory Committee.

I. The secretary of state shall appoint an electronic ballot counting device advisory committee consisting of 10 members, one of whom shall be designated as chairman, selected for his or her knowledge of voting and election process requirements. The members of the committee shall be:

- (a) Two employees of the department of state.
- (b) Three members of the general court.
- (c) Three local election officials.
- (d) Two members of the public.

II. The committee may solicit assistance from any source to assure that its recommendations comply with applicable technical, environmental, and legal standards. The committee shall meet at the call of the chairman. The first meeting of the committee shall be held within 60 days of the effective date of this section. Members shall receive mileage at the state employees rate when attending to the duties of the committee.

III. The primary duty of the committee shall be to facilitate the design of an electronic ballot counting device, or the identification of an electronic ballot counting device, for use at future elections in the state of New Hampshire that will be fail safe and provably correct and can be supported by an independent technical review to eliminate potential manipulation of election results by tampering. The committee shall also research the upgrades that are available for voting machines currently used in New Hampshire and recommend which upgrades should be required for the continued use of the machines by cities and towns.

IV. In fulfilling its duties under paragraph III, the committee shall consider:

(a) Developing or identifying an electronic ballot counting device for use at future elections in New Hampshire that can be supported by an independent technical review to eliminate potential manipulation of election results through tampering.

(b) Security, storage, programming, testing, usage, verification of vendor services, and retention of data from electronic ballot counting devices.

(c) The feasibility of having the department of state program memory cards.

(d) Issues related to public confidence in the integrity of electronic ballot counting devices.

(e) Methods for state testing of programmed memory cards before and after elections.

(f) Upgrades to existing voting machines and new products that could improve New Hampshire elections.

(g) Other issues related to the development of new electronic ballot counting devices or the use of optical scan ballot counting machines, as requested by the secretary of state.

V. The committee shall deliver a final report with its findings and recommendations to the secretary of state on or before November 1, 2009.

2 Effective Date. This act shall take effect upon its passage.

2008-1387s**AMENDED ANALYSIS**

This bill requires the secretary of state to establish an electronic ballot counting device advisory committee. The committee shall facilitate the design of an electronic ballot counting device for use at future elections in New Hampshire. The committee shall also research the upgrades that are available for voting machines currently used in New Hampshire and recommend which upgrades should be required for the continued use of the machines by cities and towns.

SENATOR CILLEY: Thank you, Madam President. I move that House Bill 285 ought to pass with amendment. This amended bill requires the Secretary of State to establish an electronic ballot-counting device advisory committee. This committee shall facilitate the design of an electronic ballot-counting device for use at future elections in New Hampshire, research the upgrades that are available for voting machines currently used in New Hampshire, and recommend which upgrades should be required for the continued use of the machines by cities and towns. The integrity of our voting machines is an issue of utmost importance. This legislation ensures that New Hampshire will remain at the forefront of safe and accurate voting technology. The Election Law and Internal Affairs Committee asks for your support on House Bill 285 with amendment. Thank you, Madam President.

The question is on the adoption of Committee Amendment 1387s. Committee Amendment 1387s adopted.

The question is on the adoption of Ought to Pass as Amended on HB 285.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

MOTION TO REMOVE FROM THE TABLE

Sen. Burling moved to have SB 437 removed from the table.

Motion adopted.

SB 437, relative to access to voter database information.

The question is on the motion to concur with House Amendment 1164h.

(The Chair recognized Sen. Burling to speak to the legislation.)

SENATOR BURLING: Thank you. In the course of our discussion last week, I was requested to obtain, if I could, from the Secretary of State's Office, a written indication of whether or not they supported the provisions of Senate Bill 437 as amended by the House. I have that in my hand, I'll read it into the record: "April 23rd, 2008. Dear Senator Burling: You have asked this Office if we support SB 437 as amended by the House of Representatives. The answer is yes, we support the work of the House Election Law Committee on SB 437 and the version of that bill which was amended and passed by the House of Representatives. Sincerely, David M. Scanlan, Deputy." What we have before us is that bill, and I had made the motion, I believe, in favor of concurrence, and I ask the members now to support by voting yes in favor of concurrence.

The question is on the concurrence of House Amendment 1164h.

**The Senate concurs with House Amendment 1164h.
SB 437 adopted.**

MOTION TO REMOVE FROM THE TABLE

Sen. Burling moved to have HB 1313 removed from the table.

Motion adopted.

HB 1313, relative to voting by the chairman of the retirement system board of trustees.

The question is on committee recommendation of Ought to Pass.

Sen. Burling offered a floor amendment.

Sen. Burling, Dist. 5

April 24, 2008

2008-1498s

10/04

Floor Amendment to HB 1313

Amend the bill by replacing all after the enacting clause with the following:

1 Retirement System; Board of Trustees; Chairman; Voting. Amend RSA 100-A:14, IV to read as follows:

IV. Each trustee ***including the chairman*** shall be entitled to one vote in the board of trustees [~~provided, however, that the chairman shall be non-voting except in the event of a tie vote~~]. Seven trustees shall constitute a quorum for the transaction of any business ***of the board of trustees***. Seven votes shall be necessary for any resolution or action by the board at any meeting.

2 Effective Date. This act shall take effect July 1, 2008.

2008-1498s

AMENDED ANALYSIS

This bill clarifies the authority of the chairman of the retirement system board of trustees to vote in matters before the board.

SENATOR BURLING: Thank you, Madam President. I offer for consideration Amendment 1498. And if I may, I'll speak to that as it's being handed out?

PRESIDENT LARSEN: You may speak to it as it's being distributed.

SENATOR BURLING: This amendment would allow the chairperson of the board of trustees of the Retirement System a vote as if he or she were just another trustee. It makes the chair a full voting member of the board, effective July 1st, 2008. It is in a time of, shall we say, great import that the trustees – important that the chair have a vote and be a full participating member in the deliberations of the board. That's what this amendment will do. A couple of you have asked me about the issue of the effective date. What I am trying to do here is make it clear that this body is not trying to tilt the scales of decision-making at the trustees. There are decisions that will be made very shortly. Our purpose is not to alter that vote, but to leave that vote to be made by the same people who made votes over the last seven months. And with that, I will ask that you support passage of the amendment, and then passage of 1313.

The question is on the adoption of Floor Amendment 1498s.

Floor Amendment 1498s adopted.

The question is on the adoption of Ought to Pass as Amended on HB 1313.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

MOTION TO REMOVE FROM THE TABLE

Sen. Sgambati moved to have HB 1394-FN removed from the table.

Motion adopted.

HB 1394-FN, relative to procedures for approvals of nursing education programs.

Sen. Sgambati offered a floor amendment.

Sen. Sgambati, Dist. 4

April 24, 2008

2008-1489s

10/09

Floor Amendment to HB 1394-FN

Amend RSA 326-B:32 as inserted by section 4 of the bill by replacing it with the following:

326-B:32 Education Programs.

I.(a) The board shall establish standards for the establishment and outcomes for nursing and nursing assistant education programs intended to prepare students for licensure or for certification, including clinical learning experiences.

(b) The board shall approve, disapprove, or withdraw approval for [such] *nursing education* programs that meet or fail to meet the requirements of this chapter *and the rules adopted by the board. Nursing education programs under this subparagraph shall not include education for nursing assistants. The board shall require that nursing education programs:*

(1) *Seek and receive approval from the postsecondary education commission prior to applying for approval from the board.*

(2) *Receive institutional regional or national accreditation in addition to specialized nursing accreditation by accrediting bodies recognized by the United States Department of Education.*

(3) *Be affiliated with an existing degree-granting institution with institutional regional or national accreditation recognized by the United States Department of Education.*

(c) *The board shall approve, disapprove, or withdraw approval for nursing assistant education programs that meet or fail to meet the requirements of this chapter and the rules adopted by the board. The board shall require that nursing assistant education programs Seek and receive approval from the postsecondary education commission prior to applying for approval from the board.*

(d) An educational institution or other entity conducting such an education program shall comply with paragraphs II and III and rules adopted by the board pursuant to RSA 541-A.

II. The board shall establish the process for determining nursing and nursing assistant education program compliance.

III. The board:

(a) Shall set requirements for establishment of :

(1) New nursing [and nursing assistant] education programs, including requirements relative to affiliation, accreditation, and site visits required for initial nursing education program approval and subsequent evaluations.

(2) New nursing assistant education programs.

(b) Shall periodically review nursing and nursing assistant education programs and require such programs to submit evidence of compliance with standards.

(c) Shall grant continuing approval if, upon review of evidence, the board determines that the program meets the established standards. The board shall publish a list of approved programs.

(d) Shall deny or withdraw approval or take such action as deemed necessary when nursing or nursing assistant education programs fail to meet the standards established by the board.

(e) Shall reinstate approval of a nursing or nursing assistant education program upon submission of satisfactory evidence that its program meets the standards established by the board.

(f) Shall establish the process for nursing and nursing assistant programs that cease operation.

IV. Any education program conducted in another state shall be deemed to be an education program approved by the board if that program meets the requirements for approval established by this section and the program has been approved by the regulatory authority of its state.

SENATOR SGAMBATI: Thank you, Madam President. The intent of 1394 when it came to us from the House was to ensure that nursing education programs were affiliated with accredited schools and received accreditation from the postsecondary education commission. There was a concern that the language was, in fact, too broadly written, and it would have encompassed licensed nursing assistants' program. Those programs are vital to keeping a workforce in our nursing home and developmental service systems, as well as our home and community-based care systems for all individuals. The Red Cross currently offers those programs, and a number of nursing homes have their own LNA education program. So the floor amendment simply adds the language that says that nothing in this subparagraph shall include the education for nursing assistants. We were trying to protect the education that's done in the community to make sure that we grow this vital workforce, and that's the effect of the amendment. Thank you, Madam President.

(The Chair recognized Sen. Burling to speak.)

SENATOR BURLING: Thank you, Madam President. Madam President, I rise ... I rise to say "Thank you" to my colleague. It is a wonder to me sometimes how the common, everyday experience of Senators comes together to make legislation better than it would have been. This is an important bill, the House worked very hard on it; we, in the Committee, worked very hard on it, and then were convinced to go forward. Sen. Sgambati came to me and said there's an additional item we need to take care of. It was because of her experience and her expertise, and all those years of knowing who's doing what in the State of New Hampshire, that we were able to make this very important amendment to this bill. I want to thank her for that, and I thank my lucky stars I was lucky enough to persuade her to run for this office (laughing). Thank you, Madam President.

The question is on the adoption of Floor Amendment 1489s.

Floor Amendment 1489s adopted.

The question is on the adoption of Ought to Pass as Amended on HB 1394-FN.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

HB 1395-FN, establishing the AIDS drug assistance program fund. Health and Human Services Committee. Ought to Pass, Vote 5-0. Senator Fuller Clark for the committee.

SENATOR FULLER CLARK: Thank you very much, Madam President. I move that House Bill 1395 ought to pass. This bill, which was brought forth as a request of the Department of Health and Human Services, creates a nonlapsing and continually appropriated fund for rebates received by the New Hampshire AIDS Drug Assistance Program. These rebates are received from pharmaceutical companies based on nationally negotiated agreements. These rebates are in addition to the federal Ryan White Care Act grant to the New Hampshire Care Program and can only be used for the AIDS Drug Assistance Program. The Department stated that there would be no cost or additional staffing requirements as a result of the bill. Please join the Health and Human Services Committee in voting House Bill 1395-FN ought to pass. Thank you very much, Madam President.

(The Chair recognized Sen. Gatsas for a question of Sen. Fuller Clark.)

SENATOR GATSAS: Senator, how much money would have lapsed to the General Fund if this nonlapsing fund was put in place?

SENATOR FULLER CLARK: Sen. Gatsas, I can't answer this question right now, but the bill has an "FN" on it and it is going to Finance, I believe.

Sen. Estabrook offered a floor amendment.

Sen. Estabrook, Dist. 21

April 24, 2008

2008-1494s

01/04

Floor Amendment to HB 1395-FN

Amend the title of the bill by replacing it with the following:

AN ACT establishing the AIDS drug assistance program fund and relative to the membership of the health services planning and review board.

Amend the bill by inserting after section 2 the following and renumbering the original section 3 to read as 4:

3 Health Services Planning and Review Board; Membership. Amend RSA 151-C:3, I(a)(2)(D) to read as follows:

(D) A ~~[county official]~~ **representative of county government nominated by the New Hampshire Association of Counties.**

2008-1494s

AMENDED ANALYSIS

This bill establishes the AIDS drug assistance program fund which is to be composed of drug rebates received on drugs purchased under the AIDS drug assistance program established under the authority of RSA 141-F.

This bill also changes a member of the health services planning and review board.

SENATOR ESTABROOK: Thank you, Madam President. I'd like to move Floor Amendment 1494s and speak to it as it's being passed out.

PRESIDENT LARSEN: Floor Amendment 1494 has been proposed. You may speak to it as it's being distributed.

SENATOR ESTABROOK: Thank you, Madam President. This is an amendment that we have previously passed twice on other bills, and unfortunately, the state of those bills in the House has not brought them back to us, so we need to attach this to something else. We have agreement from the House that this would be a welcomed amendment to the bill they've sent us in HB 1395. What the amendment does is that at the request of the counties it changes the wording of the representation of the counties to the CON Board, from the wording "a county official" to instead "a representative of county government." And this is to enable the continued service of an excellent representative of county government who has retired from his official county position. So I ask your support of Amendment 1494s. Thank you.

The question is on the adoption of Floor Amendment 1494s.

Floor Amendment 1494s adopted.

The question is on the adoption of Ought to Pass as Amended on HB 1395-FN.

Motion of Ought to Pass as Amended adopted, bill ordered to Committee on Finance (Rule 26).

HB 581-FN, relative to the penalty for purposely mistreating service animals. Judiciary Committee. Ought to Pass with Amendment, Vote 5-0. Senator Clegg for the committee.

Sen. Foster, Dist. 13

April 15, 2008

2008-1379s

08/09

Amendment to HB 581-FN

Amend the title of the bill by replacing it with the following:

AN ACT relative to the penalty for mistreating service animals.

Amend the bill by replacing sections 1-2 with the following:

1 Cruelty to Service Animals. RSA 167-D:9, II is repealed and reenacted to read as follows:

II. Any person who beats, kicks, or strikes a hearing ear dog, search and rescue dog, or service animal, with an intent to injure, mutilate, torture or disable such dog or animal or who purposely causes the death of such dog or animal shall be guilty of a class B felony.

2 Service Animals; Definition Added. Amend RSA 167-D:1 by inserting after paragraph XI the following new paragraph:

XII. "Service animal" means any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.

2008-1379s

AMENDED ANALYSIS

This bill increase the penalty from a class A misdemeanor to a class B felony for cruelty to service animals.

Recess/Out of Recess.

SENATOR GOTTESMAN: On behalf of Sen. Clegg, the author of the following comments, I move – thank you, Madam President. I move House Bill 581-FN ought to pass with amendment. This legislation increases the penalty from a Class A misdemeanor to a Class B felony for cruelty to service animals and makes it consistent with other cruelty-to-animals laws. Service animals are those who assist the blind and hard-of-hearing with their everyday activities of life and are far more than just pets. These animals enable individuals to live more independently. Service animals undergo long, expensive and detailed training in order to serve their people. When someone loses a service animal, it takes as long as a year to get a new one. This is a year during which that individual's life is severely impaired. The committee amendment makes it totally clear that there has to be an intent to injure, harm or disable a service animal. There are certain training maneuvers that are required which should not be misinterpreted as being cruel but are not. The Judiciary Committee recommends House Bill 581-FN be adopted as amended and asks your support.

(The Chair recognized Sen. Clegg to speak.)

SENATOR CLEGG: Thank you, Madam President. The committee amendment was structured so that we wouldn't be punishing folks like police canines in their training, because sometimes the dogs are kneed a little bit to teach them how to walk properly, so we were very, very careful not to just encompass everyone into this. This bill seriously now looks at a dog for a blind or someone who needs a dog to dial the phone, that type of thing; should somebody come in and actually abuse these animals, they would now suffer a severe penalty, severe enough because we believe that those dogs are essential to the life of the person who owns them. Thank you.

The question is on the adoption of Committee Amendment 1379s.
Committee Amendment 1379s adopted.

The question is on the adoption of Ought to Pass as Amended on HB 581-FN.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

HB 1294, establishing the offense of public urination or defecation. Judiciary Committee. Ought to Pass, Vote 5-0. Senator Gottesman for the committee.

SENATOR GOTTESMAN: Thank you, Madam President. I move House Bill 1294 ought to pass. This legislation was introduced in order to clearly establish that just because someone is arrested for urinating in public, it should not cause them to be charged as a sexual offender. There are frequently instances where an individual does not have access to a public restroom. Testimony at the public hearing even included a situation where a man in the Keene area, who stopped at a rest area that was closed and needed to relieve himself, ran into a problem. He was subsequently arrested and convicted of an indecent exposure offense and faced registration as a sexual offender. If someone is guilty as a sexual offender, we certainly have the mechanism to prosecute them and to warn the public, but we do not need to capture individuals who are in these situations and force them to register as sexual offenders. The Judiciary Committee recommends that House Bill 1294 be adopted and asks your support. And with the passage of this legislation, we know that we will provide some of our citizens with some much needed relief. Thank you, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on HB 1294.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 1581-FN-L, relative to the formation of stormwater utility districts. Public and Municipal Affairs Committee. Ought to Pass, Vote 5-0. Senator Roberge for the committee.

MOTION TO TABLE

Sen. Roberge moved to have HB 1581-FN-L laid on the table.

Motion adopted.

LAID ON THE TABLE

HB 1581-FN-L, relative to the formation of stormwater utility districts.

HB 1157, relative to requirements for approval of village plan alternative subdivisions. Public and Municipal Affairs Committee. Ought to Pass, Vote 6-0. Senator Burling for the committee.

SENATOR BURLING: Thank you, Madam President. Madam President, I move that House Bill 1157 ought to pass. This bill requires that village plan alternative easements be granted to the municipality. It allows open space to be manageable and clarifies the nature of each such easement. Easement enforcement is an important issue and this bill does not prevent municipalities from allowing a third party to hold an additional easement as backup. The Public and Municipal Affairs Committee requests your support for this bill. Thank you, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on HB 1157.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 1338, establishing an arboviral illness task force and relative to mosquito control and abatement. Public and Municipal Affairs Committee. Ought to Pass, Vote 6-0. Senator Hassan for the committee.

SENATOR HASSAN: Thank you, Madam President. I move that House Bill 1338 ought to pass. This bill establishes an arboviral illness task force, expands the mosquito control and abatement activities that are eligible for funding, and revises the duty of the state committee on mosquito control. The task force will review current knowledge and address future needs reflected by arboviral ecology, disease prevention and control in New Hampshire, so that accurate and timely information can be used to guide personal, local and state responses to these diseases. The state committee on mosquito control, in addition to its current duties, shall provide oversight and coordination of interagency efforts with regard to mosquito prevention and control, and in particular to provide recommendations to the Commissioner of the Department of Health and Human Services regarding, but not limited to, public health threat determinations under RSA 141-C:25. This legislation is an important complimentary piece to the recent executive order from Governor Lynch regarding mosquito policy in the state. The state has seen the real dangers of mosquito-borne illnesses, and the better coordination of effort to fight this problem further strengthens protection for our citizens. The Public and Municipal Affairs Committee asks for your support for House Bill 1338. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on HB 1338.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 1129, relative to special number plates for municipal police department vehicles. Transportation and Interstate Cooperation Committee. Ought to Pass, Vote 3-0. Senator Letourneau for the committee.

SENATOR LETOURNEAU: Thank you, Madam President. I move House Bill 1129 ought to pass. This bill requires the director of Motor Vehicles to designate a special license plate for municipal police department vehicles. By giving police cars a distinctive plate it will be easier for the average citizen to distinguish between municipal cars and unmarked police cars, especially if they are pulled over. We consider this a safety issue in transportation. Please join the Transportation, Interstate Cooperation Committee, vote ought to pass. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on HB 1129.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 1345, establishing a commission to study vehicle dealer licenses, dealer plates, and temporary plates. Transportation and Interstate Cooperation Committee. Inexpedient to Legislate, Vote 3-0. Senator Kelly for the committee.

MOTION TO TABLE

Sen. Kelly moved to have HB 1345 laid on the table.

Motion adopted.

LAI D ON THE TABLE

HB 1345, establishing a commission to study vehicle dealer licenses, dealer plates, and temporary plates.

HB 1448-FN, relative to documents prepared by the department of transportation and reimbursement fees for such documents. Transportation and Interstate Cooperation Committee. Ought to Pass, Vote 4-0. Senator Kelly for the committee.

SENATOR KELLY: Thank you, Madam President. I move HB 1448 ought to pass. This legislation authorizes the Department of Transportation Commissioner to prepare, publish and distribute documents such as reports, manuals, plans, charts, surveys and others relevant to the Department's work. It would also authorize the Commissioner to charge reimbursement fees for producing, copying, and/or mailing these documents. HB 1448 was a request of the Department and simply codifies into law what has been, and is, current practice. This bill does not impose new fees for state government services. The fees would be addressed to the Fiscal Committee and would not be set at a level to make a profit. Please join the Transportation and Interstate Cooperation Committee and vote ought to pass. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on HB 1448-FN.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 1604-FN, relative to the electronic toll collection system. Transportation and Interstate Cooperation Committee. Ought to Pass, Vote 3-0. Senator Burling for the committee.

SENATOR BURLING: Thank you, Madam President. Madam President, I move House Bill 1604 ought to pass. At the request of the Department of Transportation, this legislation changes current procedures so that after the Department of Transportation has notified the Department of

Safety of an unpaid EZ-Pass violation, the Department of Safety may suspend the owner's registration renewal privileges but not the owner's driving privileges, registration or resident plates. This legislation is *not* a cure-all for all EZ-Pass problems. But it will put a stop to those situations which have occurred in which a police officer is put in the position of having to arrest a poor motorist over the issue of a civil fine imposed for an EZ-Pass violation. The Committee feels that this will result in a substantial de-escalation of the increasing tension over EZ-Pass. We ask you to join us and vote ought to pass on 1604. Thank you, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on HB 1604-FN.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 172-FN, relative to state meat inspection. Wildlife, Fish and Game, and Agriculture Committee. Ought to Pass, Vote 4-0. Senator Janeway for the committee.

SENATOR JANEWAY: Thank you, Madam President. I move House Bill 172-FN ought to pass. This bill provides our farmers with an outlet in the event that the United States Department of Agriculture withdraws its current meat inspection program from the state, or if the Department of Agriculture allows the interstate sale of state-inspected meat. Currently, meat is inspected by the USDA at New Hampshire's one slaughterhouse, which I think, guess we all now know is in Goffstown. Should the USDA stop inspecting meat at this facility, this bill would permit the State to hire a person to perform the inspection activity. There's no cost associated with the bill. Please join the Wildlife, Fish and Game, and Agriculture Committee in voting this bill ought to pass. Thank you, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on HB 172-FN.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 666-FN, relative to the immunizations included for reimbursement in the animal population control program. Wildlife, Fish and Game, and Agriculture Committee. Ought to Pass, Vote 4-0. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you, Madam President. I move House Bill 666 ought to pass. Strange that I would get the "666" bill to take out. That's a "trifecta," and I'm a big winner on that one.

SENATOR ESTABROOK: But there's no prize today.

SENATOR D'ALLESANDRO: But no prize today because we don't do that in New Hampshire. This bill removes certain animal vaccines from the list of immunizations eligible for reimbursement under the animal control program. This legislation will be a cost-saving initiative for the spay and neuter program. Since each year the program runs out of funds early, thus closing off the program for qualified individuals. Please – animals, not people. Please join the Wildlife, Fish and Game and Agriculture Committee in voting this bill ought to pass. Thank you, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on HB 666-FN.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 1293, relative to eligibility of dog and cat owners to participate in the state's reduced fee companion animal population control program. Wildlife, Fish and Game, and Agriculture Committee. Inexpedient to Legislate, Vote 4-0. Senator Gatsas for the committee.

SENATOR GATSAS: Thank you, Madam President. I move House Bill 1293 inexpedient to legislate. This bill changes the eligibility criteria for owners of cats and dogs to participate in the reduced fee companion animal population control program, cutting expenses. By eliminating the shelter plan, will stretch the dollars further into the year, but it will also do it at the expense of individuals, their pets, and the shelters charged with providing care for the animals in the state. New Hampshire shelters rely on this program benefit to promote adoptions and improve spay-neuter compliance. Please join the Wildlife, Fish and Game, and Agriculture Committee in voting this bill inexpedient to legislate. Thank you.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on HB 1293.

Motion of Inexpedient to Legislate adopted.

HB 1297, relative to licenses for aquaculture issued by the fish and game department. Wildlife, Fish and Game, and Agriculture Committee. Ought to Pass, Vote 4-0. Senator Janeway for the committee.

SENATOR JANEWAY: Thank you, Madam President. I move House Bill 1297 ought to pass. This bill clarifies the rulemaking authority of the Fish and Game Department concerning aquaculture licensing. It adds two words, "license types," to the regulatory authority, the executive director, relative to aquaculture. And don't blame Fish and Game for this. The Joint Legislative Committee on Administrative Rules, as part of the approval of the Fish and Game Chapter 800 Rules, recommended that the Department seek legislation to clarify its authority to issue multiple types of aquaculture licenses, such as clams, oysters, mussels, I don't know what else. Please join the Wildlife, Fish and Game, and Agriculture Committee in voting this bill ought to pass. Thank you.

The question is on the adoption of committee recommendation of Ought to Pass on HB 1297.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 1351, relative to fish and game license and registration agents. Wildlife, Fish and Game, and Agriculture Committee. Ought to Pass, Vote 4-0. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you, Madam President. I move House Bill 1351 ought to pass. The Department of Fish and Game requested this legislation as a measure to ensure consistency between Fish and Game license agents and OHRV/snowmobile registration agents. Currently there are statutes that pertain specifically to Fish and Game license agents and other statutes that regulate OHRV and snowmobile registration agents. Now that the Department has taken the registration in-house they have encountered some slight differences in operational procedures when dealing with a different agent. This bill will provide consistency for both the Department and the agents. I hope that you will support the Fish and Game and Agriculture Committee – or the Wildlife, Fish and Game and Agriculture Committee in voting ought to pass. Thank you, Madam President.

The question is on the adoption of committee recommendation of Ought to Pass on HB 1351.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 1430, relative to the application of animal cruelty laws to horse and dog race tracks. Wildlife, Fish and Game, and Agriculture Committee. Inexpedient to Legislate, Vote 4-0. Senator Janeway for the committee.

MOTION TO TABLE

Sen. Janeway moved to have HB 1430 laid on the table.

Recess/Out of Recess.

The question is on the motion to table HB 1430.

Motion adopted.

LAIID ON THE TABLE

HB 1430, relative to the application of animal cruelty laws to horse and dog race tracks.

Sen. Gatsas asserted Rule 42 on HB 1430.

SPECIAL ORDER

HB 1601-FN-A, relative to funding for certain capital projects of the Pease development authority. Capital Budget Committee. Ought to Pass with Amendment, Vote 4-0. Senator D'Allesandro for the committee.

Capital Budget

April 15, 2008

2008-1374s

10/03

Amendment to HB 1601-FN-A

Amend the bill by replacing section 1 with the following:

1 Capital Budget; Pease Development Authority. Amend 2007, 264:1, XII to read as follows:

XII. Pease Development Authority.

A. Market Street Marine Terminal Pier	2,300,000
Less Other*	<u>-2,300,000</u>
Net state appropriation subparagraph A	0
B. Rye Harbor Commercial Fish Pier	1,560,000
Less Other[*] **	<u>-1,560,000</u>
Net state appropriation subparagraph B	0

*To provide funds for the appropriations made in ~~subparagraphs A and B~~ **subparagraph A**, the state treasurer is hereby authorized to borrow upon the credit of the state not exceeding the sum of ~~[\$3,860,000]~~ **\$2,300,000** and for said purpose may issue bonds and notes in the name of and on behalf of the state of New Hampshire in accordance with RSA 6-A. Payments of principal and interest on the bonds and notes shall be made from fees relating to wharfage, dockage, and other marine terminal operations under RSA 12-G:42. For the appropriation made in subparagraph A, the Pease development authority and the attorney general shall seek reimbursement or restitution for the cost of repairs of damage to the facility, and the appropriation may not be expended until approval is received by the capital budget overview committee. **For the project authorized in subparagraph A, the Pease development authority shall determine the availability of any other division of ports and harbors funds to make payments of principal and interest. The authority shall recommend any funding changes to the capital budget overview committee for future legislation.**

**** (a) The sum of \$1,560,000 for the fiscal year ending June 30, 2008 is hereby appropriated to the Pease development authority for**

the Rye harbor commercial fish pier capital project. The sum appropriated under this subparagraph shall be a charge against the sums received and held be the treasurer under subparagraph (b).

(b) The Pease development authority shall pay to the state treasurer by June 30, 2008 from the fund in RSA 12-G:36 the sum of \$1,560,000, and the state shall reduce by said sum the Pease development authority's debt owed to the state relative to start-up funding costs under RSA 12-G:34; and 1991, 355:110, as amended by 1992, 260:11; 1992, 260:12, as amended by 1993, 358:3; 1994, 415:1; and 1995, 307:10.

Total state appropriation paragraph XII

\$0

SENATOR D'ALLESANDRO: Thank you, Madam President. I move House Bill 1601 ought to pass as amended. This bill appropriates \$1.56 million for the 2008 Fiscal Year to the Pease Development Authority for the purpose of replacing the Rye Harbor Pier. The Rye Harbor Pier was destroyed when we had our last series of weather situations. Director Green, who is now at the Pease Development Authority, told the Senate Capital Budget Committee that the pier was essentially destroyed during the Mother's Day storm. It is structurally unsafe and beyond repair. The Pease Development Authority will pay the \$1.56 million dollars back to the State by June 30th, 2008. And the State will in turn reduce the Pease Development Authority's outstanding debt by that amount. The committee amendment simply corrects a drafting error that made reference to the wrong statute. The Capital Budget Committee recommends that this legislation be adopted as amended, and asks for your support. Thank you, Madam President.

The question is on the adoption of Committee Amendment 1374s.
Committee Amendment 1374s adopted.

Sen. D'Allesandro offered a floor amendment.

Sen. D'Allesandro, Dist. 20

Sen. Odell, Dist. 8

April 24, 2008

2008-1505s

10/01

Floor Amendment to HB 1601-FN-A

Amend the title of the bill by replacing it with the following:

AN ACT relative to funding for certain capital projects of the Pease development authority, relative, to reporting dates for the in-stream flow pilot program, and relative to certain requirements under the comprehensive shoreland protection act.

Amend footnote ** (a) of 2007, 264:1, XII, B as inserted by section 1 of the bill by replacing it with the following:

**** (a) The sum of \$1,560,000 for the fiscal year ending June 30, 2008 is hereby appropriated to the Pease development authority for the Rye harbor commercial fish pier capital project. The sum appropriated under this subparagraph shall be a charge against the sums received and held by the treasurer under subparagraph (b).**

Amend the bill by replacing all after section 1 with the following:

2 Instream Flow Pilot Program; Reporting Date Extended. Amend 2002, 278:2, III as amended by 2003, 319:48 to read as follows:

III. The commissioner of the department of environmental services shall initiate and adopt rules pursuant to RSA 541-A for other rivers

designated under RSA 483:15 only after the adoption and implementation of the rules relative to protected instream flows pursuant to RSA 483:9-c for the Lamprey and Souhegan rivers and completion of the report required under section 3, III(d) of this act, but not before December 1, [2008] **2010**.

3 Instream Flow Pilot Program; Reporting Dates Extended. Amend 2002, 278:3, III as amended by 2003, 319:49 to read as follows:

III. The commissioner of the department of environmental services shall:

(a) By April 1, [2007] **2009**, conduct protected instream flow studies and submit a report that details the results of science for the pilot program, including the projected impacts of the protected instream flows and water management plans to be implemented on water users, wildlife, recreation, and other interests along the rivers and any recommendations for proposed legislation. The department shall hold a public hearing jointly with the senate environment committee and the house resources, recreation and development committee within 60 days and be open for a public comment period of an additional 30 days. The department shall consider the public comments received in any revisions to the protected instream flow levels and water management plans for the Lamprey River and the Souhegan River.

(b) By October 1, [2007] **2009**, adopt and implement the protected instream flows and water management plans relative to the Lamprey River and the Souhegan River.

(c) One year after the adoption and implementation of the protected instream flow levels and water management plans for the Lamprey River and the Souhegan River, the department shall hold a public hearing and open a 30-day public comment period. The department shall consider the public comments received in any revisions to the protected instream flow levels and water management plans for the Lamprey River and the Souhegan River.

(d) By December 1, [2008] **2010**, submit a report that details the activities and results of the pilot program, including the impacts of the protected instream flows and water management plans on water users, wildlife, recreation, and other interests along the rivers and any recommendations for proposed legislation. The report shall also include a summary of public comments received and the completed instream flow studies and the adopted protected instream flow levels and water management plans and shall be submitted to the senate president, the speaker of the house of representatives, the governor, and the state library.

4 Committee to Study the Impact of Water Withdrawals on Instream Flows; Report Date Extended. Amend RSA 2000, 242:5 as amended by 2001, 138:6, 2002, 278:6, and 2003, 319:50 to read as follows:

242:5 Report. The committee shall report its findings and any recommendations for proposed legislation to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before December 1, [2008] **2010**.

5 Repeal. The following are repealed:

- I. RSA 483-B:5-a, I-IV, relative to permit required.
- II. RSA 483-B:5-a, V, relative to permit required.
- III. RSA 483-B:4, VII-a, relative to definition of impervious surface.
- IV. RSA 483-B:4, X-a, relative to definition of natural ground cover.
- V. RSA 483-B:4, XI-a and XI-b, relative to nonconforming lot of record and nonconforming structure.

VI. RSA 483-B:4, XXIV-a, relative to definition of undisturbed state.

6 Definition. RSA 483-B:4, XVI(c) is repealed and reenacted to read as follows:

(c) Rivers, meaning all year-round flowing waters of fourth order or higher, as shown on the now current version of the U.S. Geological Survey 7 ½' topographic maps. Stream order shall be determined using the Strahler method, whereby the highest year-round streams in a watershed are first order streams, their juncture yields second order streams, the juncture of second order streams yields third order streams, et seq. A listing of the streams of fourth order and higher shall be prepared and maintained by the office of energy and planning and delivered to the commissioner 30 days after the effective date of this act.

7 Definition. RS 483-B:4, XXVI is repealed and reenacted to read as follows:

XXVI. "Water dependent structure" means a structure that services and supports activities that require direct access to, or contact with the water, or both, as an operational necessity and that requires a permit under RSA 482-A, including but not limited to a dock, wharf, pier, breakwater, beach, boathouse, retaining wall, or launching ramp.

8 Prior Approval; Permits. RSA 483-B:6 is repealed and reenacted to read as follows:

483-B:6 Prior Approval; Permits.

I. Within the protected shoreland, any person intending to:

(a) Engage in any earth excavation activity shall obtain all necessary local approvals in compliance with RSA 155-E.

(b) Construct a water-dependent structure, alter the bank, or construct or replenish a beach shall obtain approval and all necessary permits pursuant to RSA 482-A.

(c) Install a septic system as described in RSA 483-B:9, V(b)(1)-(3) shall obtain all permits pursuant to RSA 485-A:29.

(d) Conduct an activity resulting in a contiguous disturbed area exceeding 50,000 square feet shall obtain a permit pursuant to RSA 485-A:17.

(e) Subdivide land as described in RSA 483-B:9, V(d) and (e) shall obtain approval pursuant to RSA 485-A:29.

II. In applying for these approvals and permits, such persons shall demonstrate to the satisfaction of the department that the proposal meets or exceeds the development standards of this chapter. The department shall grant, deny, or attach reasonable conditions to a permit listed in subparagraphs I(a)-(e), to protect the public waters or the public health, safety or welfare. Such conditions shall be related to the purposes of this chapter.

9 Minimum Protection Standards. RSA 483-B:9, IV-b is repealed and reenacted to read as follows:

IV-b. Public utility lines and associated structures and facilities shall be permitted by the commissioner as necessary, consistent with the purposes of this chapter and other state law.

10 Waterfront Buffer. RSA 483-B:9, V is repealed and reenacted to read as follows:

V. The following minimum standards shall apply to the protected shoreland provided that forest management not associated with shoreland development or land conversion, and conducted in compliance with RSA 227-J:9; forestry involving water supply reservoir watershed management; or agriculture conducted in accordance with best management practices; shall be exempt from the provisions of this chapter:

(a) NATURAL WOODLAND BUFFER.

(1) Where existing, a natural woodland buffer shall be maintained within 150 feet of the reference line. The purpose of this buffer shall be to protect the quality of public waters by minimizing erosion, preventing siltation and turbidity, stabilizing soils, preventing excess nutrient and chemical pollution, maintaining natural water temperatures, maintaining a healthy tree canopy and understory, preserving fish and wildlife habitat, and respecting the overall natural condition of the protected shoreland.

(2) Within the natural woodland buffer of the protected shoreland under conditions defined in RSA 483-B:9, V, all of the following prohibitions and limitations shall apply:

(A) Not more than a maximum of 50 percent of the basal area of trees, and a maximum of 50 percent of the total number of saplings shall be removed for any purpose in a 20-year period. A healthy, well-distributed stand of trees, saplings, shrubs, ground cover, and their living, undamaged root systems shall be left in place.

(B) Any person applying to the department for a septic system construction approval or alteration of terrain permit pursuant to RSA 485-A, or an excavating and dredging permit pursuant to RSA 482-A, within the protected shoreland shall include photographic documentation of the natural woodland buffer.

(C) Structures, as defined in RSA 483-B:4, XXII, within the natural woodland buffer shall be afforded an opening for building construction that shall be excluded when computing the percentage limitations under subparagraph (a)(2)(A).

(D) Dead, diseased, unsafe, or fallen trees, saplings, shrubs, or ground cover may be removed. Their removal shall not be used in computing the percentage limitations under subparagraph (a)(2)(A).

(E) Stumps and their root systems, which are located within 50 feet of the reference line, shall be left intact in the ground, unless removal is specifically approved by the department under RSA 482-A.

(F) Preservation of dead and living trees that provide dens and nesting places for wildlife is encouraged.

(G) Planting efforts that are beneficial to wildlife are encouraged.

(b) SEPTIC SYSTEMS.

(1) All new lots, including those in excess of 5 acres, created within the protected shoreland are subject to subdivision approval by the department of environmental services under RSA 485-A:29.

(2) The following conditions, based on the characteristics of the receiving soil as they relate to U.S. Department of Agriculture, Natural Resources Conservation Service drainage classes, shall dictate the setback requirements for all new leaching portions of new septic systems, as follows:

(A) Adjacent to ponds, lakes, estuaries, and the open ocean.

(i) Where the receiving soil downgradient of the leaching portions of a septic system is a porous sand and gravel material with a percolation rate equal to or faster than 2 minutes per inch, the setback shall be at least 125 feet from the reference line;

(ii) For soils with restrictive layers within 18 inches of the natural soil surface, the setback shall be at least 100 feet from the reference line; and

(iii) For all other soil conditions, the setback shall be at least 75 feet from the reference line.

(B) Adjacent to rivers the setback shall be no less than 75 feet.

(3) The placement of all septic tanks and leaching portions of septic systems for replacement systems shall comply with the requirements of subparagraph (b)(2), to the maximum extent feasible.

(c) EROSION AND SILTATION.

(1) All new structures, modifications to existing structures, and excavation or earth moving within protected shoreland shall be designed and constructed in accordance with rules adopted by the department under RSA 541-A for terrain alteration under RSA 485-A:17, to manage stormwater and control erosion and sediment, during and after construction.

(2) New structures and all modifications to existing structures within the protected shoreland shall be designed and constructed to prevent the release of surface runoff across exposed mineral soils.

(3) A permit under RSA 485-A:17, I shall be required for improved, developed, or subdivided land whenever there is a contiguous disturbed area exceeding 50,000 square feet that is either partially or wholly within protected shoreland.

(d) MINIMUM LOTS AND RESIDENTIAL DEVELOPMENT. In the protected shoreland:

(1) The minimum size for new lots in areas dependent upon on-site septic systems shall be determined by soil type lot size determinations, as established by the department of environmental services under RSA 485-A and rules adopted to implement it.

(2) For projects in areas dependent upon on-site sewage and septic systems, the total number of residential units in the protected shoreland, whether built on individual lots or grouped as cluster or condominium development, shall not exceed:

(A) One unit per 150 feet of shoreland frontage; or

(B) For any lot that does not have direct frontage, one unit per 150 feet of lot width as measured parallel to the shoreland frontage that lies between the lot and the reference line.

(3) No lot dependent upon an on-site septic system, having frontage on public waters, shall be created with less than 150 feet of shoreland frontage.

(4) Lots in areas serviced by municipal sewers shall conform to municipal minimum lot standards, and shall not be subject to any shoreland frontage requirement, except as provided by municipal standards.

(5) Lots and residential units outside of the protected shoreland shall not be subject to this chapter.

(e) MINIMUM LOTS AND NON-RESIDENTIAL DEVELOPMENT. In the protected shoreland:

(1) The minimum size for new non-residential lots in areas dependent upon on-site septic systems shall be determined by soil type lot size determinations, as set forth under rules adopted under RSA 541-A.

(2) Non-residential development requiring on-site water, sewage, and septic systems shall not be constructed on lots less than 150 feet in width.

(3) Non-residential lots in areas serviced by municipal sewers shall conform to municipal minimum lot standards.

(4) Non-residential lots outside of the protected shoreland shall not be subject to this chapter.

(f) COMMON OWNERS AND RESIDENTIAL OR NON-RESIDENTIAL DEVELOPMENT. In the protected shoreland, waterfront parcels held in common by one or more owners of contiguous interior parcels may be developed, but only in a manner consistent with the provisions of

this chapter. Care shall be taken for the adequate provision of parking, toilet facilities, and related support systems to minimize the project's impact on the public waters.

(g) The commissioner shall have the authority to grant variances from the minimum standards of this section. Such authority shall be exercised subject to the criteria which govern the grant of a variance by a zoning board of adjustment under RSA 674:33, I(b).

11 Nonconforming Structures. RSA 483-B:11 is repealed and reenacted to read as follows:

483-B:11 Nonconforming Structures.

I. Except as otherwise prohibited by law, nonconforming structures, erected prior to July 1, 1994, located within the protected shoreland may be repaired, renovated, or replaced in kind using modern technologies, provided the result is a functionally equivalent use. Such repair or replacement may alter the interior design or existing foundation, but no expansion of the existing footprint or outside dimensions shall be permitted. An expansion that increases the sewerage load to an on-site septic system, or changes or expands the use of a septic system or converts a structure to condominiums or any other project identified under RSA 485-A:29-44 and rules adopted to implement it shall require approval by the department. Between the primary building line and the reference line, no alteration shall extend the structure closer to the public water, except that the addition of a deck or open porch is permitted up to a maximum of 12 feet towards the reference line.

II. When reviewing requests for the redevelopment of sites that contain nonconforming structures erected prior to July 1, 1994, the commissioner shall review proposals which are more nearly conforming than the existing structures, and may waive some of the standards specified in RSA 483-B:9, so long as there is at least the same degree of protection provided to the public waters. For the purposes of this section, a proposal that is "more nearly conforming" means a proposal for significant changes to the location or size of existing structures that bring the structures into greater conformity, or a proposal for changes to other aspects of the property, including but not limited to stormwater management, wastewater treatment or traffic volume or flow, or both types of proposal which significantly improve wildlife habitat or resource protection.

12 New Section; Permit Required; Exemption Amend RSA 483-B by inserting after section 5-a the following section:

483-B:5-b Permit Required; Exemption.

I.(a) No person shall commence construction, excavation, or filling activities within the protected shoreland without obtaining a permit from the department to ensure compliance with this chapter.

(b) The permit application fee shall be \$100 plus \$.10 per square foot of area affected by the proposed activities and shall be deposited in the wetlands and shorelands review fund established under RSA 482-A:3, III. Such fees shall be capped as follows:

(1) For projects of 0-9,999 square feet, \$750.

(2) For projects of 10,000-24,999 square feet, \$1,875.

(3) For projects of 25,000 square feet or more, \$3,750.

II. Timber harvesting operations permitting requirements shall be in accordance with RSA 485-A:17, IV and therefore shall be exempt from the permitting requirement under paragraph I.

III. Construction of public roads, public utility lines and associated structures and facilities, and public water access facilities shall be exempt from the permitting fees of paragraph I.

IV. Impacts in the protected shoreland that receive a permit in accordance with RSA 482-A shall not require a permit under this section.

V.(a) Within 30 days of receipt of an application for a permit or 75 days of receipt of an application for a permit that will require a variance of the minimum standard of RSA 483-B:9, V or a waiver of the minimum standards of RSA 483-B:9, the department shall request any additional information required to complete its evaluation of the application, and provide the applicant with any written technical comments the department deems necessary. Any request for additional information shall specify that the applicant submit such information as soon as practicable and notify the applicant that if all of the requested information is not received within 60 days of the request, the department shall deny the application.

(b) When the department requests additional information pursuant to subparagraph (a), the department shall, within 30 days of the department's receipt of the information:

- (1) Approve the application and issue a permit;
- (2) Deny the application, in whole or in part; or
- (3) Extend the time for response for good cause and with the written agreement of the applicant.

(c) Where no request for additional information is made, the department shall, within 30 days of receipt of the application for a permit or 75 days of receipt of an application for a permit that will require a variance of the minimum standard of RSA 483-B:9, V or a waiver of the minimum standards of RSA 483-B:9, approve or deny the application, in whole or in part.

(d) If the department fails to render a decision in the time frame provided in this paragraph, the application shall be deemed to be approved and a permit shall be issued.

13 New Paragraph; Definitions. Amend RSA 483-B:4 by inserting after paragraph VII-a the following new paragraph:

VII-b. "Impervious surface" means any modified surface that cannot effectively absorb or infiltrate water. Examples of impervious surfaces include, but are not limited to, roofs, decks, patios, and paved, gravel, or crushed stone driveways, parking areas, and walkways unless designed to effectively absorb or infiltrate water.

14 New Paragraph; Definitions. Amend RSA 483-B:4 by inserting after paragraph X-a the following new paragraph:

X-b. "Natural ground cover" means any herbaceous plant or any woody seedling or shrub generally less than 3 feet in height. Natural ground cover shall also include naturally occurring leaf or needle litter, stumps, decaying woody debris, stones, and boulders. Natural ground cover shall not include lawns, invasive species as listed by the department of agriculture, markets, and food in accordance with RSA 430:53, III, exotic species as designated by rule of the department of environmental services in accordance with RSA 487:24, VII, imported organic or stone mulches, or other artificial materials.

15 Definitions. RSA 483-B:4, XI-c is repealed and reenacted to read as follows:

XI-c. "Nonconforming lot of record" means an existing lot which does not conform to the provisions of this chapter.

XI-d. "Nonconforming structure" means a structure that, either individually or when viewed in combination with other structures on the property, does not conform to the provisions of this chapter, including but not limited to the impervious surface limits of RSA 483-B:9, V(g).

XI-e. "Ordinary high water mark" means the line on the shore, running parallel to the main stem of the river, established by the fluctua-

tions of water and indicated by physical characteristics such as a clear, natural line impressed on the immediate bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas. Where the ordinary high water mark is not easily discernable, the ordinary high water mark may be determined by the department of environmental services.

16 Definitions. RSA 483-B:4, XVI(c) is repealed and reenacted to read as follows:

(c) Rivers, meaning all year-round flowing waters of fourth order or higher and all rivers and river segments designated as protected under RSA 483:15. Stream order shall be determined using the New Hampshire hydrography dataset archived by the geographically referenced analysis and information transfer system (GRANIT) at the complex systems research center of the university of New Hampshire, and developed by GRANIT in collaboration with the department of environmental services. A listing of the streams of fourth order and higher shall be prepared and periodically updated by the GRANIT at the complex systems research center of the university of New Hampshire and delivered to the commissioner 30 days after the effective date of this section.

17 New Paragraph; Definitions. Amend RSA 483-B:4 by inserting after paragraph XXIV-a the following new paragraph:

XXIV-b. "Undisturbed state" means native vegetation allowed to grow without interference.

18 Definitions. RSA 483-B:4, XXVI is repealed and reenacted to read as follows:

XXVI. "Water dependent structure" means a structure that is a dock, wharf, pier, breakwater, beach, boathouse, retaining wall, or launching ramp or other similar structure, or any part thereof, built over, on, or in the waters of the state.

19 Other Required Permits and Approvals. RSA 483-B:6 is repealed and reenacted to read as follows:

483-B:6 Other Required Permits and Approvals.

I. Within the protected shoreland, any person intending to:

(a) Engage in any earth excavation activity shall obtain all necessary local approvals in compliance with RSA 155-E.

(b) Construct a water-dependent structure, alter the bank, or construct or replenish a beach shall obtain approval and all necessary permits pursuant to RSA 482-A.

(c) Install a septic system as described in RSA 483-B:9, V(c) shall obtain all permits pursuant to RSA 485-A:29.

(d) Conduct an activity resulting in a contiguous disturbed area exceeding 50,000 square feet shall obtain a permit pursuant to RSA 485-A:17.

(e) Subdivide land as described in RSA 483-B:9, V(e) and (f) shall obtain approval pursuant to RSA 485-A:29.

(f) Conduct an activity regulated under a local zoning ordinance shall obtain all necessary local approvals.

II. In applying for approvals and permits, pursuant to paragraph I, applicants shall demonstrate that the proposal meets or exceeds the development standards of this chapter. The department shall develop minimum standards for information to be required on or with all applications under paragraph I. The department or municipality shall grant, deny, or attach reasonable conditions to approvals or permits listed in subparagraphs I(a)-(f), to protect the public waters or the public health, safety or welfare. Such conditions shall be related to the purposes of this chapter.

III. The commissioner shall have the sole authority to issue variances and waivers of the provisions of this chapter as specifically authorized by this chapter.

IV. No variance, permit, or approval issued by a municipality shall exempt the owner from obtaining any other necessary permit or approval from the department as required by this chapter.

20 Minimum Shoreland Protection Standards. RSA 483-B:9, IV-b is repealed and reenacted to read as follows:

IV-b. Public utility lines and associated structures and facilities, public roads, and public water access facilities including boat ramps shall be permitted by the commissioner as necessary and consistent with the purposes of this chapter and other state law.

21 Waterfront Buffer. RSA 483-B:9, V is repealed and reenacted to read as follows:

V. The following minimum standards shall apply to areas and activities within the protected shoreland with the exception of forest management that is not associated with shoreland development or land conversion, and is conducted in compliance with RSA 227-J:9; forestry conducted by or under the direction of a water supplier for the purpose of managing a water supply watershed; and agriculture conducted in accordance with best management practices as required by RSA 483-B:3, III:

(a) MAINTENANCE OF A WATERFRONT BUFFER.

(1) The waterfront buffer shall be those protected shorelands within 50 feet of the reference line. The purpose of this buffer shall be to protect the quality of public waters while allowing homeowner discretion with regard to water access, safety, viewscape maintenance, and lot design.

(2) Within the waterfront buffer all of the following prohibitions and limitations shall apply:

(A) No chemicals, including pesticides of any kind or fertilizers of any kind except those specified in RSA 483-B:9, II(d), shall be applied.

(B) Rocks and stumps and their root systems shall be left intact in the ground unless removal is specifically approved by the department, pursuant to RSA 482-A or RSA 483-B:11, II.

(C) No natural ground cover shall be removed except as necessary for a foot path to water as provided under RSA 483-B:9, V(a)(2) (D)(viii), cutting those portions that have grown over 3 feet in height for the purpose of providing a view, or as specifically approved by the department, pursuant to RSA 482-A or 483-B:11, II.

(D) Starting from the northerly or easterly boundary of the property, and working along the shoreline, the waterfront buffer shall be divided into 50 by 50 foot segments. Within each segment a minimum combined tree and sapling score of at least 50 points shall be maintained. If for any reason there is insufficient area for a full segment, the number of points required to be maintained in that partial segment shall be proportional to that required of a full segment.

(i) Tree and sapling diameters shall be measured at 4 1/2 feet above the ground and are scored as follows:

Diameter	Score
1 inch to 6 inches	1
greater than 6 inches to 12 inches	5
greater than 12 inches	10

(ii) Dead, diseased, or unsafe trees or saplings shall not be included in scoring.

(iii) If the total tree and sapling score in any 50 foot by 50 foot segment exceeds 50 points, then trees and saplings may be removed

as long as the sum of the scores for the remaining trees and saplings in that segment does not total less than 50 points. Trees and saplings may be removed from partial segments provided that the sum of the scores for the remaining trees and saplings in that partial segment is equal to or greater than the proportional point requirement.

(iv) The department may approve applications pursuant to RSA 482-A that include the planting of native trees and saplings as necessary to at least maintain either the existing combined tree and sapling score or the minimum score required. The department shall not approve any application that would result in a combined tree and sapling score less than the minimum score required where the segment initially meets the minimum score or would result in any reduction of the combined tree and sapling score where the segment does not initially meet the minimum score.

(v) Owners of lots that were legally developed prior to July 1, 2008 may maintain but not enlarge cleared areas, including but not limited to existing lawns and beaches, within the waterfront buffer. Conversion to or planting of cleared areas with native species of ground cover, shrubs, saplings, and trees is encouraged but shall not be required unless it is necessary to meet the requirements of subparagraphs (g)(2) or (g)(3), or RSA 483-B:11, II.

(vi) Normal trimming, pruning, and thinning of branches to the extent necessary to protect structures, maintain clearances, and provide views is permitted. Trimming, pruning, and thinning of branches for the purpose of providing views shall be limited to the bottom 1/2 of the trees or saplings.

(vii) When necessary for the completion of construction activities permitted in accordance with RSA 483-B:6, a temporary 12 foot wide access path shall be allowed. The access path shall be completely restored and replanted with native vegetation upon completion of construction except as allowed under subparagraph (viii).

(viii) A permanent 6-foot wide foot path to the water body, configured in a manner that will not concentrate storm water runoff or contribute to erosion, is allowed.

(b) MAINTENANCE OF A NATURAL WOODLAND BUFFER.

(1) A natural woodland buffer shall be maintained within 150 feet of the reference line. The first 50 feet of this buffer is designated the waterfront buffer and is subject to the additional requirements of subparagraph (a). The purpose of the natural woodland buffer shall be to protect the quality of public waters by minimizing erosion, preventing siltation and turbidity, stabilizing soils, preventing excess nutrient and chemical pollution, maintaining natural water temperatures, maintaining a healthy tree canopy and understory, preserving fish and wildlife habitat, and respecting the overall natural condition of the protected shoreland.

(2) Within the natural woodland buffer of a given lot:

(A) At least 50 percent of the area outside of impervious surfaces shall be maintained in an undisturbed state. Owners of lots legally developed prior to July 1, 2008 that do not comply with this standard are encouraged to, but shall not be required to, increase the percentage of area maintained in an undisturbed state, except as required by the department under RSA 483-B:11, II. The percentage of area maintained in an undisturbed state on nonconforming lots shall not be decreased.

(B) Any person applying to the department for a septic system construction approval or alteration of terrain permit pursuant to RSA 485-A, or an excavating and dredging permit pursuant to RSA 482-A, within the protected shoreland shall include photographic documentation of the natural woodland buffer.

(C) Dead, diseased, or unsafe, trees, saplings, or shrubs that pose an imminent hazard to structures or have the potential to cause personal injury may be removed regardless of any requirements that pertain to the natural woodland buffer under this chapter. Such exemptions shall not be used to contravene the intent of the law.

(D) Preservation of dead and living trees that provide dens and nesting places for wildlife is encouraged.

(E) Native species planting efforts that are beneficial to wildlife are encouraged.

(c) SEPTIC SYSTEMS.

(1) The subdivision of a parcel of land shall be subject to subdivision approval by the department of environmental services under RSA 485-A:29 if any portion of the land to be subdivided is within the protected shoreland.

(2) The following conditions, based on the characteristics of the receiving soil as they relate to U.S. Department of Agriculture, Natural Resources Conservation Service drainage classes, shall dictate the setback requirements for all new leaching portions of new septic systems, as follows:

(A) Adjacent to ponds, lakes, estuaries, and the open ocean.

(i) Where the receiving soil downgradient of the leaching portions of a septic system is a porous sand and gravel material with a percolation rate equal to or faster than 2 minutes per inch, the setback shall be at least 125 feet from the reference line;

(ii) For soils with restrictive layers within 18 inches of the natural soil surface, the setback shall be at least 100 feet from the reference line; and

(iii) For all other soil conditions, the setback shall be at least 75 feet from the reference line.

(B) Adjacent to rivers the setback shall be no less than 75 feet.

(3) The placement of all septic tanks and leaching portions of septic systems for replacement systems shall comply with the requirements of subparagraph (c)(2), to the maximum extent feasible.

(d) EROSION AND SILTATION.

(1) All new structures, modifications to existing structures, and excavation or earth moving within protected shoreland shall be designed and constructed in accordance with rules adopted by the department under RSA 541-A for terrain alteration under RSA 485-A:17, to manage stormwater and control erosion and sediment, during and after construction.

(2) New structures and all modifications to existing structures within the protected shoreland shall be designed and constructed to prevent the release of surface runoff across exposed mineral soils.

(3) A permit under RSA 485-A:17, I shall be required for improved, developed, or subdivided land whenever there is a contiguous disturbed area exceeding 50,000 square feet that is either partially or wholly within protected shoreland.

(e) MINIMUM LOTS AND RESIDENTIAL DEVELOPMENT. In the protected shoreland:

(1) The minimum size for new lots in areas dependent upon on-site septic systems shall be determined by soil type lot size determinations, as established by the department of environmental services under RSA 485-A and rules adopted to implement it.

(2) For projects in areas dependent upon on-site sewage and septic systems, the total number of residential units in the protected shoreland, whether built on individual lots or grouped as cluster or condominium development, shall not exceed:

(A) One unit per 150 feet of shoreland frontage; or

(B) For any lot that does not have direct frontage, one unit per 150 feet of lot width as measured parallel to the shoreland frontage that lies between the lot and the reference line.

(3) No lot having frontage on public waters, shall be created with less than 150 feet of shoreland frontage.

(4) Lots and residential units outside of the protected shoreland shall not be subject to this chapter.

(f) MINIMUM LOTS AND NON-RESIDENTIAL DEVELOPMENT. In the protected shoreland:

(1) The minimum size for new non-residential lots in areas dependent upon on-site septic systems shall be determined by soil type lot size determinations, as set forth under rules adopted under RSA 541-A.

(2) No lot having frontage on public water shall be created with less than 150 feet of shoreland frontage.

(3) Non-residential lots outside of the protected shoreland shall not be subject to this chapter.

(g) IMPERVIOUS SURFACES.

(1) No more than 20 percent of the area of a lot located within the protected shoreland shall be composed of impervious surfaces, except as provided in subparagraphs (2) and (3).

(2) The impervious surface area shall not exceed 25 percent provided that in the waterfront buffer, in addition to any other provisions that apply to such area under this chapter, no trees or saplings shall be removed as provided for in RSA 483-B:9, V(a)(2)(D)(iii) and such restriction is recorded in the chain of title for the property. In addition, if the natural tree and sapling cover in the waterfront buffer does not meet the 50-point minimum score of RSA 483-B:9, V(a)(2)(D) in any segment, then such segment shall be planted, as determined by rule of the department, with native trees, saplings, or natural ground cover in sufficient quantity, type, and location either to meet the minimum score or to provide at least an equivalent level of protection as offered by the minimum score.

(3) The impervious surface area shall not exceed 30 percent provided the conditions of subparagraph (2) are satisfied and a stormwater management system designed to ensure that post-development total runoff volume shall not exceed the pre-development total runoff volume, and approved by the department, shall be implemented and maintained.

(4) Property owners and developers are encouraged to seek creative solutions that utilize low impact development techniques.

(h) COMMON OWNERS AND RESIDENTIAL OR NON-RESIDENTIAL DEVELOPMENT. In the protected shoreland, waterfront parcels held in common by one or more owners of contiguous interior parcels may be developed, but only in a manner consistent with the provisions of this chapter. Care shall be taken for the adequate provision of parking, toilet facilities, and related support systems to minimize the project's impact on the public waters.

(i) The commissioner shall have the authority to grant variances from the minimum standards of this section. Such authority shall be exercised subject to the criteria which govern the grant of a variance by a zoning board of adjustment under RSA 674:33, I(b).

22 Nonconforming Structures. RSA 483-B:11 is repealed and reenacted to read as follows:

483-B:11 Nonconforming Structures.

I. Except as otherwise prohibited by law, nonconforming structures located within the protected shoreland may be repaired, renovated, or replaced in kind using modern technologies, provided the result is a functionally equivalent use. Such repair or replacement may alter the interior design or existing foundation, but shall result in no expansion of the existing footprint except as authorized by the department pursuant to paragraph II. An expansion that increases the sewerage load to an on-site septic system, or changes or expands the use of a septic system or converts a structure to condominiums or any other project identified under RSA 485-A:29-44 and rules adopted to implement it shall require approval by the department. Between the primary building line and the reference line, no alteration shall extend the structure closer to the public water, except that the addition of a deck or open porch is permitted up to a maximum of 12 feet towards the reference line for nonconforming structures erected prior to July 1, 1994.

II. When reviewing requests for the redevelopment of sites that contain nonconforming structures or any expansions of nonconforming structures the commissioner shall review proposals which are more nearly conforming than the existing structures, and may waive some of the standards specified in RSA 483-B:9, so long as there is at least the same degree of protection provided to the public waters. For the purposes of this section, a proposal that is "more nearly conforming" means a proposal for significant changes to the location or size of existing structures that bring the structures into greater conformity, or a proposal for changes to other aspects of the property, including but not limited to stormwater management, wastewater treatment or traffic volume or flow, or both types of proposal which significantly improve wildlife habitat or resource protection.

23 Rulemaking. Amend RSA 483-B:17, XI to read as follows:

XI. Procedures and criteria for permitting under RSA [483-B:5-a] **483-B:5-b**, including permit by notification and the identification of those activities that may be conducted without obtaining a permit, all consistent with the provisions of this chapter.

24 Excavating and Dredging Permit; Certain Exemptions. Amend RSA 482-A:3, III to read as follows:

III. The filing fees collected pursuant to paragraphs I, V(c), XI(h), and XII(c) and RSA [483-B:5-a] **483-B:5-b** are continually appropriated to and shall be expended by the department for paying per diem and expenses of the public members of the council, hiring additional staff, reviewing applications and activities relative to the wetlands of the state and protected shorelands under RSA 483-B, conducting field investigations, and holding public hearings. Such fees shall be held by the treasurer in a nonlapsing fund identified as the wetlands and shorelands review fund.

25 Funding Transfer and Repayment. Amend 2007, 269:6 to read as follows:

269:6 Funding Transfer and Repayment. The state treasurer shall transfer \$375,000 from the general fund to the wetlands and shorelands review fund under RSA 482-A:3, III for the biennium ending June 30, 2009. The governor is authorized to draw a warrant for said sum out of

any money in the treasury not otherwise appropriated. Notwithstanding any provision of law to the contrary, 1/2 of the permit fees collected under RSA [483-B:5-a] **483-B:5-b** shall be deposited in the general fund until such time as the \$375,000 is repaid.

26 Repeal and Readoption of Rules.

I. The commissioner of the department of environmental services shall repeal administrative rules chapter Env-Wq 1400 adopted March 24, 2008 pursuant to 2007, 267:11.

II. The commissioner of the department of environmental services shall readopt the administrative rules that were in effect prior to the effective date of the rules repealed under paragraph I. Such rules shall be effective as rules of the department and shall remain in effect until rules are adopted under paragraph III, or are otherwise repealed or amended or have expired in accordance with RSA 541-A.

III. The commissioner of the department of environmental services may adopt rules to be in effect as of July 1, 2008 that are the same as the rules repealed under paragraph I, except that the commissioner shall modify the date references in the rules to take into account the July 1, 2008 effective date. Such rule adoption shall be exempt from the rule-making provisions of RSA 541-A, provided the commissioner adopts the rules and files them with the office of legislative services prior to July 1, 2008. The rules shall expire on July 1, 2016 unless readopted, amended, or repealed pursuant to RSA 541-A.

IV. The commissioner of the department of environmental services shall prepare, and the director of the office of legislative services shall publish in the rulemaking register, one or more notices, as necessary, to clearly state which rules will be in effect during affected time periods.

27 Repeal. The following are repealed:

I. RSA 483-B:5-b, I(b), relative to permit application fees.

II. RSA 483-B:5-b, III, relative to exemptions from permit application fees.

28 Effective Date.

I. Sections 1 and 5-11 of this act shall take effect upon its passage.

II. Section 27 of this act shall take effect July 1, 2011.

III The remainder of this act shall take effect July 1, 2008.

2008-1505s

AMENDED ANALYSIS

This bill revises the authority and funding for the Pease development authority capital projects in the 2007 capital budget.

This bill extends the reporting dates for the instream flow pilot program.

This bill also changes the effective date for certain provisions of 2007, 267 and 2007, 269, relating to the comprehensive shoreland protection act, from April 1, 2008 to July 1, 2008.

SENATOR D'ALLESANDRO: Thank you, Madam President. I have a further amendment that should be in your hands.

PRESIDENT LARSEN: Floor Amendment 1505 has been proposed. You may speak to it as it's -

SENATOR D'ALLESANDRO: It's been withheld from my eyes.

PRESIDENT LARSEN: You may speak to it as it's being distributed.

SENATOR D'ALLESANDRO: As soon as I see it, I will speak to it. Ahhh. That Harold Janeway is a lifesaver. Thank you, Madam President. Madam

President, there was a slight drafting error in the original bill, and that correction has been made. It was a one-word correction. So that's the initial part of the bill. And, secondly, what we do as part of this bill is we take the date for the Shoreline Protection bill and we insert the 1st of July as the date when that should come into effect. So, number one, the bill extends the reporting dates for the in-stream flow pilot program, and the bill changes the effective date for certain provisions of 2007-267 and 2007-269 relating to the Comprehensive Shoreline [sic] Protection Act that changes the dates from April 1st, 2008 to July 1st, 2008. Those are the substantive changes in the amendment. So I ask your vote of confidence on Amendment 1505s. Thank you, Madam President.

The question is on the adoption of Floor Amendment 1505s.

Floor Amendment 1505s adopted.

Recess/Out of Recess.

The question is on the adoption of HB 1601-FN-A as amended.

Sen. Kenney offered a floor amendment.

Sen. Kenney, Dist. 3

Sen. Gallus, Dist. 1

Sen. Roberge, Dist. 9

Sen. Bragdon, Dist. 11

Sen. Clegg, Dist. 14

Sen. Barnes, Dist. 17

Sen. Letourneau, Dist. 19

Sen. Downing, Dist. 22

April 24, 2008

2008-1510s

10/09

Floor Amendment to HB 1601-FN-A

Amend the title of the bill by replacing it with the following:

AN ACT relative to funding for certain capital projects of the Pease development authority, relative, to reporting dates for the in-stream flow pilot program, and relative to certain requirements under the comprehensive shoreland protection act.

Amend footnote ** (a) of 2007, 264:1, XII, B as inserted by section 1 of the bill by replacing it with the following:

***** (a) The sum of \$1,560,000 for the fiscal year ending June 30, 2008 is hereby appropriated to the Pease development authority for the Rye harbor commercial fish pier capital project. The sum appropriated under this subparagraph shall be a charge against the sums received and held by the treasurer under subparagraph (b).***

Amend the bill by replacing all after section 1 with the following:

2 Instream Flow Pilot Program; Reporting Date Extended. Amend 2002, 278:2, III as amended by 2003, 319:48 to read as follows:

III. The commissioner of the department of environmental services shall initiate and adopt rules pursuant to RSA 541-A for other rivers designated under RSA 483:15 only after the adoption and implementation of the rules relative to protected instream flows pursuant to RSA 483:9-c for the Lamprey and Souhegan rivers and completion of the report required under section 3, III(d) of this act, but not before December 1, [2008] **2010**.

3 Instream Flow Pilot Program; Reporting Dates Extended. Amend 2002, 278:3, III as amended by 2003, 319:49 to read as follows:

III. The commissioner of the department of environmental services shall:

(a) By April 1, [2007] **2009**, conduct protected instream flow studies and submit a report that details the results of science for the pilot program, including the projected impacts of the protected instream flows and water management plans to be implemented on water users, wildlife, recreation, and other interests along the rivers and any recommendations for proposed legislation. The department shall hold a public hearing jointly with the senate environment committee and the house resources, recreation and development committee within 60 days and be open for a public comment period of an additional 30 days. The department shall consider the public comments received in any revisions to the protected instream flow levels and water management plans for the Lamprey River and the Souhegan River.

(b) By October 1, [2007] **2009**, adopt and implement the protected instream flows and water management plans relative to the Lamprey River and the Souhegan River.

(c) One year after the adoption and implementation of the protected instream flow levels and water management plans for the Lamprey River and the Souhegan River, the department shall hold a public hearing and open a 30-day public comment period. The department shall consider the public comments received in any revisions to the protected instream flow levels and water management plans for the Lamprey River and the Souhegan River.

(d) By December 1, [2008] **2010**, submit a report that details the activities and results of the pilot program, including the impacts of the protected instream flows and water management plans on water users, wildlife, recreation, and other interests along the rivers and any recommendations for proposed legislation. The report shall also include a summary of public comments received and the completed instream flow studies and the adopted protected instream flow levels and water management plans and shall be submitted to the senate president, the speaker of the house of representatives, the governor, and the state library.

4 Committee to Study the Impact of Water Withdrawals on Instream Flows; Report Date Extended. Amend RSA 2000, 242:5 as amended by 2001, 138:6, 2002, 278:6, and 2003, 319:50 to read as follows:

242:5 Report. The committee shall report its findings and any recommendations for proposed legislation to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before December 1, [2008] **2010**.

5 Repeal. The following are repealed:

I. RSA 483-B:5-a, I-IV, relative to permit required.

II. RSA 483-B:5-a, V, relative to permit required.

III. RSA 483-B:4, VII-a, relative to definition of impervious surface.

IV. RSA 483-B:4, X-a, relative to definition of natural ground cover.

V. RSA 483-B:4, XI-a and XI-b, relative to nonconforming lot of record and nonconforming structure.

VI. RSA 483-B:4, XXIV-a, relative to definition of undisturbed state.

6 Definition. RSA 483-B:4, XVI(c) is repealed and reenacted to read as follows:

(c) Rivers, meaning all year-round flowing waters of fourth order or higher, as shown on the now current version of the U.S. Geological Survey 7 ½' topographic maps. Stream order shall be determined using

the Strahler method, whereby the highest year-round streams in a watershed are first order streams, their juncture yields second order streams, the juncture of second order streams yields third order streams, et seq. A listing of the streams of fourth order and higher shall be prepared and maintained by the office of energy and planning and delivered to the commissioner 30 days after the effective date of this act.

7 Definition. RS 483-B:4, XXVI is repealed and reenacted to read as follows:

XXVI. "Water dependent structure" means a structure that services and supports activities that require direct access to, or contact with the water, or both, as an operational necessity and that requires a permit under RSA 482-A, including but not limited to a dock, wharf, pier, breakwater, beach, boathouse, retaining wall, or launching ramp.

8 Prior Approval; Permits. RSA 483-B:6 is repealed and reenacted to read as follows:

483-B:6 Prior Approval; Permits.

I. Within the protected shoreland, any person intending to:

(a) Engage in any earth excavation activity shall obtain all necessary local approvals in compliance with RSA 155-E.

(b) Construct a water-dependent structure, alter the bank, or construct or replenish a beach shall obtain approval and all necessary permits pursuant to RSA 482-A.

(c) Install a septic system as described in RSA 483-B:9, V(b)(1)-(3) shall obtain all permits pursuant to RSA 485-A:29.

(d) Conduct an activity resulting in a contiguous disturbed area exceeding 50,000 square feet shall obtain a permit pursuant to RSA 485-A:17.

(e) Subdivide land as described in RSA 483-B:9, V(d) and (e) shall obtain approval pursuant to RSA 485-A:29.

II. In applying for these approvals and permits, such persons shall demonstrate to the satisfaction of the department that the proposal meets or exceeds the development standards of this chapter. The department shall grant, deny, or attach reasonable conditions to a permit listed in subparagraphs I(a)-(e), to protect the public waters or the public health, safety or welfare. Such conditions shall be related to the purposes of this chapter.

9 Minimum Protection Standards. RSA 483-B:9, IV-b is repealed and reenacted to read as follows:

IV-b. Public utility lines and associated structures and facilities shall be permitted by the commissioner as necessary, consistent with the purposes of this chapter and other state law.

10 Waterfront Buffer. RSA 483-B:9, V is repealed and reenacted to read as follows:

V. The following minimum standards shall apply to the protected shoreland provided that forest management not associated with shoreland development or land conversion, and conducted in compliance with RSA 227-J:9; forestry involving water supply reservoir watershed management; or agriculture conducted in accordance with best management practices; shall be exempt from the provisions of this chapter:

(a) NATURAL WOODLAND BUFFER.

(1) Where existing, a natural woodland buffer shall be maintained within 150 feet of the reference line. The purpose of this buffer shall be to protect the quality of public waters by minimizing erosion, preventing siltation and turbidity, stabilizing soils, preventing excess nutrient and chemical pollution, maintaining natural water tempera-

tures, maintaining a healthy tree canopy and understory, preserving fish and wildlife habitat, and respecting the overall natural condition of the protected shoreland.

(2) Within the natural woodland buffer of the protected shoreland under conditions defined in RSA 483-B:9, V, all of the following prohibitions and limitations shall apply:

(A) Not more than a maximum of 50 percent of the basal area of trees, and a maximum of 50 percent of the total number of saplings shall be removed for any purpose in a 20-year period. A healthy, well-distributed stand of trees, saplings, shrubs, ground cover, and their living, undamaged root systems shall be left in place.

(B) Any person applying to the department for a septic system construction approval or alteration of terrain permit pursuant to RSA 485-A, or an excavating and dredging permit pursuant to RSA 482-A, within the protected shoreland shall include photographic documentation of the natural woodland buffer.

(C) Structures, as defined in RSA 483-B:4, XXII, within the natural woodland buffer shall be afforded an opening for building construction that shall be excluded when computing the percentage limitations under subparagraph (a)(2)(A).

(D) Dead, diseased, unsafe, or fallen trees, saplings, shrubs, or ground cover may be removed. Their removal shall not be used in computing the percentage limitations under subparagraph (a)(2)(A).

(E) Stumps and their root systems, which are located within 50 feet of the reference line, shall be left intact in the ground, unless removal is specifically approved by the department under RSA 482-A.

(F) Preservation of dead and living trees that provide dens and nesting places for wildlife is encouraged.

(G) Planting efforts that are beneficial to wildlife are encouraged.

(b) SEPTIC SYSTEMS.

(1) All new lots, including those in excess of 5 acres, created within the protected shoreland are subject to subdivision approval by the department of environmental services under RSA 485-A:29.

(2) The following conditions, based on the characteristics of the receiving soil as they relate to U.S. Department of Agriculture, Natural Resources Conservation Service drainage classes, shall dictate the setback requirements for all new leaching portions of new septic systems, as follows:

(A) Adjacent to ponds, lakes, estuaries, and the open ocean.

(i) Where the receiving soil downgradient of the leaching portions of a septic system is a porous sand and gravel material with a percolation rate equal to or faster than 2 minutes per inch, the setback shall be at least 125 feet from the reference line;

(ii) For soils with restrictive layers within 18 inches of the natural soil surface, the setback shall be at least 100 feet from the reference line; and

(iii) For all other soil conditions, the setback shall be at least 75 feet from the reference line.

(B) Adjacent to rivers the setback shall be no less than 75 feet.

(3) The placement of all septic tanks and leaching portions of septic systems for replacement systems shall comply with the requirements of subparagraph (b)(2), to the maximum extent feasible.

(c) EROSION AND SILTATION.

(1) All new structures, modifications to existing structures, and excavation or earth moving within protected shoreland shall be designed and constructed in accordance with rules adopted by the department under RSA 541-A for terrain alteration under RSA 485-A:17, to manage stormwater and control erosion and sediment, during and after construction.

(2) New structures and all modifications to existing structures within the protected shoreland shall be designed and constructed to prevent the release of surface runoff across exposed mineral soils.

(3) A permit under RSA 485-A:17, I shall be required for improved, developed, or subdivided land whenever there is a contiguous disturbed area exceeding 50,000 square feet that is either partially or wholly within protected shoreland.

(d) MINIMUM LOTS AND RESIDENTIAL DEVELOPMENT. In the protected shoreland:

(1) The minimum size for new lots in areas dependent upon on-site septic systems shall be determined by soil type lot size determinations, as established by the department of environmental services under RSA 485-A and rules adopted to implement it.

(2) For projects in areas dependent upon on-site sewage and septic systems, the total number of residential units in the protected shoreland, whether built on individual lots or grouped as cluster or condominium development, shall not exceed:

(A) One unit per 150 feet of shoreland frontage; or

(B) For any lot that does not have direct frontage, one unit per 150 feet of lot width as measured parallel to the shoreland frontage that lies between the lot and the reference line.

(3) No lot dependent upon an on-site septic system, having frontage on public waters, shall be created with less than 150 feet of shoreland frontage.

(4) Lots in areas serviced by municipal sewers shall conform to municipal minimum lot standards, and shall not be subject to any shoreland frontage requirement, except as provided by municipal standards.

(5) Lots and residential units outside of the protected shoreland shall not be subject to this chapter.

(e) MINIMUM LOTS AND NON-RESIDENTIAL DEVELOPMENT. In the protected shoreland:

(1) The minimum size for new non-residential lots in areas dependent upon on-site septic systems shall be determined by soil type lot size determinations, as set forth under rules adopted under RSA 541-A.

(2) Non-residential development requiring on-site water, sewage, and septic systems shall not be constructed on lots less than 150 feet in width.

(3) Non-residential lots in areas serviced by municipal sewers shall conform to municipal minimum lot standards.

(4) Non-residential lots outside of the protected shoreland shall not be subject to this chapter.

(f) COMMON OWNERS AND RESIDENTIAL OR NON-RESIDENTIAL DEVELOPMENT. In the protected shoreland, waterfront parcels held in common by one or more owners of contiguous interior parcels may be developed, but only in a manner consistent with the provisions of this chapter. Care shall be taken for the adequate provision of parking, toilet facilities, and related support systems to minimize the project's impact on the public waters.

(g) The commissioner shall have the authority to grant variances from the minimum standards of this section. Such authority shall be exercised subject to the criteria which govern the grant of a variance by a zoning board of adjustment under RSA 674:33, I(b).

11 Nonconforming Structures. RSA 483-B:11 is repealed and reenacted to read as follows:

483-B:11 Nonconforming Structures.

I. Except as otherwise prohibited by law, nonconforming structures, erected prior to July 1, 1994, located within the protected shoreland may be repaired, renovated, or replaced in kind using modern technologies, provided the result is a functionally equivalent use. Such repair or replacement may alter the interior design or existing foundation, but no expansion of the existing footprint or outside dimensions shall be permitted. An expansion that increases the sewerage load to an on-site septic system, or changes or expands the use of a septic system or converts a structure to condominiums or any other project identified under RSA 485-A:29-44 and rules adopted to implement it shall require approval by the department. Between the primary building line and the reference line, no alteration shall extend the structure closer to the public water, except that the addition of a deck or open porch is permitted up to a maximum of 12 feet towards the reference line.

II. When reviewing requests for the redevelopment of sites that contain nonconforming structures erected prior to July 1, 1994, the commissioner shall review proposals which are more nearly conforming than the existing structures, and may waive some of the standards specified in RSA 483-B:9, so long as there is at least the same degree of protection provided to the public waters. For the purposes of this section, a proposal that is "more nearly conforming" means a proposal for significant changes to the location or size of existing structures that bring the structures into greater conformity, or a proposal for changes to other aspects of the property, including but not limited to stormwater management, wastewater treatment or traffic volume or flow, or both types of proposal which significantly improve wildlife habitat or resource protection.

12 New Section; Permit Required; Exemption Amend RSA 483-B by inserting after section 5-a the following section:

483-B:5-b Permit Required; Exemption.

I.(a) No person shall commence construction, excavation, or filling activities within the protected shoreland without obtaining a permit from the department to ensure compliance with this chapter.

(b) The permit application fee shall be \$100 plus \$.10 per square foot of area affected by the proposed activities and shall be deposited in the wetlands and shorelands review fund established under RSA 482-A:3, III. Such fees shall be capped as follows:

(1) For projects of 0-9,999 square feet, \$750.

(2) For projects of 10,000-24,999 square feet, \$1,875.

(3) For projects of 25,000 square feet or more, \$3,750.

II. Timber harvesting operations permitting requirements shall be in accordance with RSA 485-A:17, IV and therefore shall be exempt from the permitting requirement under paragraph I.

III. Construction of public roads, public utility lines and associated structures and facilities, and public water access facilities shall be exempt from the permitting fees of paragraph I.

IV. Impacts in the protected shoreland that receive a permit in accordance with RSA 482-A shall not require a permit under this section.

V.(a) Within 30 days of receipt of an application for a permit or 75 days of receipt of an application for a permit that will require a vari-

ance of the minimum standard of RSA 483-B:9, V or a waiver of the minimum standards of RSA 483-B:9, the department shall request any additional information required to complete its evaluation of the application, and provide the applicant with any written technical comments the department deems necessary. Any request for additional information shall specify that the applicant submit such information as soon as practicable and notify the applicant that if all of the requested information is not received within 60 days of the request, the department shall deny the application.

(b) When the department requests additional information pursuant to subparagraph (a), the department shall, within 30 days of the department's receipt of the information:

(1) Approve the application and issue a permit;

(2) Deny the application, in whole or in part; or

(3) Extend the time for response for good cause and with the written agreement of the applicant.

(c) Where no request for additional information is made, the department shall, within 30 days of receipt of the application for a permit or 75 days of receipt of an application for a permit that will require a variance of the minimum standard of RSA 483-B:9, V or a waiver of the minimum standards of RSA 483-B:9, approve or deny the application, in whole or in part.

(d) If the department fails to render a decision in the time frame provided in this paragraph, the application shall be deemed to be approved and a permit shall be issued.

13 New Paragraph; Definitions. Amend RSA 483-B:4 by inserting after paragraph VII-a the following new paragraph:

VII-b. "Impervious surface" means any modified surface that cannot effectively absorb or infiltrate water. Examples of impervious surfaces include, but are not limited to, roofs, decks, patios, and paved, gravel, or crushed stone driveways, parking areas, and walkways unless designed to effectively absorb or infiltrate water.

14 New Paragraph; Definitions. Amend RSA 483-B:4 by inserting after paragraph X-a the following new paragraph:

X-b. "Natural ground cover" means any herbaceous plant or any woody seedling or shrub generally less than 3 feet in height. Natural ground cover shall also include naturally occurring leaf or needle litter, stumps, decaying woody debris, stones, and boulders. Natural ground cover shall not include lawns, invasive species as listed by the department of agriculture, markets, and food in accordance with RSA 430:53, III, exotic species as designated by rule of the department of environmental services in accordance with RSA 487:24, VII, imported organic or stone mulches, or other artificial materials.

15 Definitions. RSA 483-B:4, XI-c is repealed and reenacted to read as follows:

XI-c. "Nonconforming lot of record" means an existing lot which does not conform to the provisions of this chapter.

XI-d. "Nonconforming structure" means a structure that, either individually or when viewed in combination with other structures on the property, does not conform to the provisions of this chapter, including but not limited to the impervious surface limits of RSA 483-B:9, V(g).

XI-e. "Ordinary high water mark" means the line on the shore, running parallel to the main stem of the river, established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the immediate bank, shelving, changes in the

character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas. Where the ordinary high water mark is not easily discernable, the ordinary high water mark may be determined by the department of environmental services.

16 Definitions. RSA 483-B:4, XVI(c) is repealed and reenacted to read as follows:

(c) Rivers, meaning all year-round flowing waters of fourth order or higher and all rivers and river segments designated as protected under RSA 483:15. Stream order shall be determined using the New Hampshire hydrography dataset archived by the geographically referenced analysis and information transfer system (GRANIT) at the complex systems research center of the university of New Hampshire, and developed by GRANIT in collaboration with the department of environmental services. A listing of the streams of fourth order and higher shall be prepared and periodically updated by the GRANIT at the complex systems research center of the university of New Hampshire and delivered to the commissioner 30 days after the effective date of this section.

17 New Paragraph; Definitions. Amend RSA 483-B:4 by inserting after paragraph XXIV-a the following new paragraph:

XXIV-b. "Undisturbed state" means native vegetation allowed to grow without interference.

18 Definitions. RSA 483-B:4, XXVI is repealed and reenacted to read as follows:

XXVI. "Water dependent structure" means a structure that is a dock, wharf, pier, breakwater, beach, boathouse, retaining wall, or launching ramp or other similar structure, or any part thereof, built over, on, or in the waters of the state.

19 Other Required Permits and Approvals. RSA 483-B:6 is repealed and reenacted to read as follows:

483-B:6 Other Required Permits and Approvals.

I. Within the protected shoreland, any person intending to:

(a) Engage in any earth excavation activity shall obtain all necessary local approvals in compliance with RSA 155-E.

(b) Construct a water-dependent structure, alter the bank, or construct or replenish a beach shall obtain approval and all necessary permits pursuant to RSA 482-A.

(c) Install a septic system as described in RSA 483-B:9, V(c) shall obtain all permits pursuant to RSA 485-A:29.

(d) Conduct an activity resulting in a contiguous disturbed area exceeding 50,000 square feet shall obtain a permit pursuant to RSA 485-A:17.

(e) Subdivide land as described in RSA 483-B:9, V(e) and (f) shall obtain approval pursuant to RSA 485-A:29.

(f) Conduct an activity regulated under a local zoning ordinance shall obtain all necessary local approvals.

II. In applying for approvals and permits, pursuant to paragraph I, applicants shall demonstrate that the proposal meets or exceeds the development standards of this chapter. The department shall develop minimum standards for information to be required on or with all applications under paragraph I. The department or municipality shall grant, deny, or attach reasonable conditions to approvals or permits listed in subparagraphs I(a)-(f), to protect the public waters or the public health, safety or welfare. Such conditions shall be related to the purposes of this chapter.

III. The commissioner shall have the sole authority to issue variances and waivers of the provisions of this chapter as specifically authorized by this chapter.

IV. No variance, permit, or approval issued by a municipality shall exempt the owner from obtaining any other necessary permit or approval from the department as required by this chapter.

20 Minimum Shoreland Protection Standards. RSA 483-B:9, IV-b is repealed and reenacted to read as follows:

IV-b. Public utility lines and associated structures and facilities, public roads, and public water access facilities including boat ramps shall be permitted by the commissioner as necessary and consistent with the purposes of this chapter and other state law.

21 Waterfront Buffer. RSA 483-B:9, V is repealed and reenacted to read as follows:

V. The following minimum standards shall apply to areas and activities within the protected shoreland with the exception of forest management that is not associated with shoreland development or land conversion, and is conducted in compliance with RSA 227-J:9; forestry conducted by or under the direction of a water supplier for the purpose of managing a water supply watershed; and agriculture conducted in accordance with best management practices as required by RSA 483-B:3, III:

(a) MAINTENANCE OF A WATERFRONT BUFFER.

(1) The waterfront buffer shall be those protected shorelands within 50 feet of the reference line. The purpose of this buffer shall be to protect the quality of public waters while allowing homeowner discretion with regard to water access, safety, viewscape maintenance, and lot design.

(2) Within the waterfront buffer all of the following prohibitions and limitations shall apply:

(A) No chemicals, including pesticides of any kind or fertilizers of any kind except those specified in RSA 483-B:9, II(d), shall be applied.

(B) Rocks and stumps and their root systems shall be left intact in the ground unless removal is specifically approved by the department, pursuant to RSA 482-A or RSA 483-B:11, II.

(C) No natural ground cover shall be removed except as necessary for a foot path to water as provided under RSA 483-B:9, V(a)(2) (D)(viii), cutting those portions that have grown over 3 feet in height for the purpose of providing a view, or as specifically approved by the department, pursuant to RSA 482-A or 483-B:11, II.

(D) Starting from the northerly or easterly boundary of the property, and working along the shoreline, the waterfront buffer shall be divided into 50 by 50 foot segments. Within each segment a minimum combined tree and sapling score of at least 50 points shall be maintained. If for any reason there is insufficient area for a full segment, the number of points required to be maintained in that partial segment shall be proportional to that required of a full segment.

(i) Tree and sapling diameters shall be measured at 4 1/2 feet above the ground and are scored as follows:

Diameter	Score
1 inch to 6 inches	1
greater than 6 inches to 12 inches	5
greater than 12 inches	10

(ii) Dead, diseased, or unsafe trees or saplings shall not be included in scoring.

(iii) If the total tree and sapling score in any 50 foot by 50 foot segment exceeds 50 points, then trees and saplings may be removed as long as the sum of the scores for the remaining trees and saplings in that segment does not total less than 50 points. Trees and saplings may be removed from partial segments provided that the sum of the scores for the remaining trees and saplings in that partial segment is equal to or greater than the proportional point requirement.

(iv) The department may approve applications pursuant to RSA 482-A that include the planting of native trees and saplings as necessary to at least maintain either the existing combined tree and sapling score or the minimum score required. The department shall not approve any application that would result in a combined tree and sapling score less than the minimum score required where the segment initially meets the minimum score or would result in any reduction of the combined tree and sapling score where the segment does not initially meet the minimum score.

(v) Owners of lots that were legally developed prior to October 1, 2008 may maintain but not enlarge cleared areas, including but not limited to existing lawns and beaches, within the waterfront buffer. Conversion to or planting of cleared areas with native species of ground cover, shrubs, saplings, and trees is encouraged but shall not be required unless it is necessary to meet the requirements of subparagraphs (g)(2) or (g)(3), or RSA 483-B:11, II.

(vi) Normal trimming, pruning, and thinning of branches to the extent necessary to protect structures, maintain clearances, and provide views is permitted. Trimming, pruning, and thinning of branches for the purpose of providing views shall be limited to the bottom 1/2 of the trees or saplings.

(vii) When necessary for the completion of construction activities permitted in accordance with RSA 483-B:6, a temporary 12 foot wide access path shall be allowed. The access path shall be completely restored and replanted with native vegetation upon completion of construction except as allowed under subparagraph (viii).

(viii) A permanent 6-foot wide foot path to the water body, configured in a manner that will not concentrate storm water runoff or contribute to erosion, is allowed.

(b) MAINTENANCE OF A NATURAL WOODLAND BUFFER.

(1) A natural woodland buffer shall be maintained within 150 feet of the reference line. The first 50 feet of this buffer is designated the waterfront buffer and is subject to the additional requirements of subparagraph (a). The purpose of the natural woodland buffer shall be to protect the quality of public waters by minimizing erosion, preventing siltation and turbidity, stabilizing soils, preventing excess nutrient and chemical pollution, maintaining natural water temperatures, maintaining a healthy tree canopy and understory, preserving fish and wildlife habitat, and respecting the overall natural condition of the protected shoreland.

(2) Within the natural woodland buffer of a given lot:

(A) At least 50 percent of the area outside of impervious surfaces shall be maintained in an undisturbed state. Owners of lots legally developed prior to October 1, 2008 that do not comply with this standard are encouraged to, but shall not be required to, increase the percentage of area maintained in an undisturbed state, except as required by the department under RSA 483-B:11, II. The percentage of area maintained in an undisturbed state on nonconforming lots shall not be decreased.

(B) Any person applying to the department for a septic system construction approval or alteration of terrain permit pursuant to RSA 485-A, or an excavating and dredging permit pursuant to RSA 482-A, within the protected shoreland shall include photographic documentation of the natural woodland buffer.

(C) Dead, diseased, or unsafe, trees, saplings, or shrubs that pose an imminent hazard to structures or have the potential to cause personal injury may be removed regardless of any requirements that pertain to the natural woodland buffer under this chapter. Such exemptions shall not be used to contravene the intent of the law.

(D) Preservation of dead and living trees that provide dens and nesting places for wildlife is encouraged.

(E) Native species planting efforts that are beneficial to wildlife are encouraged.

(c) SEPTIC SYSTEMS.

(1) The subdivision of a parcel of land shall be subject to subdivision approval by the department of environmental services under RSA 485-A:29 if any portion of the land to be subdivided is within the protected shoreland.

(2) The following conditions, based on the characteristics of the receiving soil as they relate to U.S. Department of Agriculture, Natural Resources Conservation Service drainage classes, shall dictate the setback requirements for all new leaching portions of new septic systems, as follows:

(A) Adjacent to ponds, lakes, estuaries, and the open ocean.

(i) Where the receiving soil downgradient of the leaching portions of a septic system is a porous sand and gravel material with a percolation rate equal to or faster than 2 minutes per inch, the setback shall be at least 125 feet from the reference line;

(ii) For soils with restrictive layers within 18 inches of the natural soil surface, the setback shall be at least 100 feet from the reference line; and

(iii) For all other soil conditions, the setback shall be at least 75 feet from the reference line.

(B) Adjacent to rivers the setback shall be no less than 75 feet.

(3) The placement of all septic tanks and leaching portions of septic systems for replacement systems shall comply with the requirements of subparagraph (c)(2), to the maximum extent feasible.

(d) EROSION AND SILTATION.

(1) All new structures, modifications to existing structures, and excavation or earth moving within protected shoreland shall be designed and constructed in accordance with rules adopted by the department under RSA 541-A for terrain alteration under RSA 485-A:17, to manage stormwater and control erosion and sediment, during and after construction.

(2) New structures and all modifications to existing structures within the protected shoreland shall be designed and constructed to prevent the release of surface runoff across exposed mineral soils.

(3) A permit under RSA 485-A:17, I shall be required for improved, developed, or subdivided land whenever there is a contiguous disturbed area exceeding 50,000 square feet that is either partially or wholly within protected shoreland.

(e) MINIMUM LOTS AND RESIDENTIAL DEVELOPMENT. In the protected shoreland:

(1) The minimum size for new lots in areas dependent upon on-site septic systems shall be determined by soil type lot size determinations, as established by the department of environmental services under RSA 485-A and rules adopted to implement it.

(2) For projects in areas dependent upon on-site sewage and septic systems, the total number of residential units in the protected shoreland, whether built on individual lots or grouped as cluster or condominium development, shall not exceed:

(A) One unit per 150 feet of shoreland frontage; or

(B) For any lot that does not have direct frontage, one unit per 150 feet of lot width as measured parallel to the shoreland frontage that lies between the lot and the reference line.

(3) No lot having frontage on public waters, shall be created with less than 150 feet of shoreland frontage.

(4) Lots and residential units outside of the protected shoreland shall not be subject to this chapter.

(f) MINIMUM LOTS AND NON-RESIDENTIAL DEVELOPMENT. In the protected shoreland:

(1) The minimum size for new non-residential lots in areas dependent upon on-site septic systems shall be determined by soil type lot size determinations, as set forth under rules adopted under RSA 541-A.

(2) No lot having frontage on public water shall be created with less than 150 feet of shoreland frontage.

(3) Non-residential lots outside of the protected shoreland shall not be subject to this chapter.

(g) IMPERVIOUS SURFACES.

(1) No more than 20 percent of the area of a lot located within the protected shoreland shall be composed of impervious surfaces, except as provided in subparagraphs (2) and (3).

(2) The impervious surface area shall not exceed 25 percent provided that in the waterfront buffer, in addition to any other provisions that apply to such area under this chapter, no trees or saplings shall be removed as provided for in RSA 483-B:9, V(a)(2)(D)(iii) and such restriction is recorded in the chain of title for the property. In addition, if the natural tree and sapling cover in the waterfront buffer does not meet the 50-point minimum score of RSA 483-B:9, V(a)(2)(D) in any segment, then such segment shall be planted, as determined by rule of the department, with native trees, saplings, or natural ground cover in sufficient quantity, type, and location either to meet the minimum score or to provide at least an equivalent level of protection as offered by the minimum score.

(3) The impervious surface area shall not exceed 30 percent provided the conditions of subparagraph (2) are satisfied and a stormwater management system designed to ensure that post-development total runoff volume shall not exceed the pre-development total runoff volume, and approved by the department, shall be implemented and maintained.

(4) Property owners and developers are encouraged to seek creative solutions that utilize low impact development techniques.

(h) COMMON OWNERS AND RESIDENTIAL OR NON-RESIDENTIAL DEVELOPMENT. In the protected shoreland, waterfront parcels held in common by one or more owners of contiguous interior parcels may be developed, but only in a manner consistent with the provisions of this chapter. Care shall be taken for the adequate provision of parking, toilet facilities, and related support systems to minimize the project's impact on the public waters.

(i) The commissioner shall have the authority to grant variances from the minimum standards of this section. Such authority shall be exercised subject to the criteria which govern the grant of a variance by a zoning board of adjustment under RSA 674:33, I(b).

22 Nonconforming Structures. RSA 483-B:11 is repealed and reenacted to read as follows:

483-B:11 Nonconforming Structures.

I. Except as otherwise prohibited by law, nonconforming structures located within the protected shoreland may be repaired, renovated, or replaced in kind using modern technologies, provided the result is a functionally equivalent use. Such repair or replacement may alter the interior design or existing foundation, but shall result in no expansion of the existing footprint except as authorized by the department pursuant to paragraph II. An expansion that increases the sewerage load to an on-site septic system, or changes or expands the use of a septic system or converts a structure to condominiums or any other project identified under RSA 485-A:29-44 and rules adopted to implement it shall require approval by the department. Between the primary building line and the reference line, no alteration shall extend the structure closer to the public water, except that the addition of a deck or open porch is permitted up to a maximum of 12 feet towards the reference line for nonconforming structures erected prior to July 1, 1994.

II. When reviewing requests for the redevelopment of sites that contain nonconforming structures or any expansions of nonconforming structures the commissioner shall review proposals which are more nearly conforming than the existing structures, and may waive some of the standards specified in RSA 483-B:9, so long as there is at least the same degree of protection provided to the public waters. For the purposes of this section, a proposal that is "more nearly conforming" means a proposal for significant changes to the location or size of existing structures that bring the structures into greater conformity, or a proposal for changes to other aspects of the property, including but not limited to stormwater management, wastewater treatment or traffic volume or flow, or both types of proposal which significantly improve wildlife habitat or resource protection.

23 Rulemaking. Amend RSA 483-B:17, XI to read as follows:

XI. Procedures and criteria for permitting under RSA ~~[483-B:5-a]~~ **483-B:5-b**, including permit by notification and the identification of those activities that may be conducted without obtaining a permit, all consistent with the provisions of this chapter.

24 Excavating and Dredging Permit; Certain Exemptions. Amend RSA 482-A:3, III to read as follows:

III. The filing fees collected pursuant to paragraphs I, V(c), XI(h), and XII(c) and RSA ~~[483-B:5-a]~~ **483-B:5-b** are continually appropriated to and shall be expended by the department for paying per diem and expenses of the public members of the council, hiring additional staff, reviewing applications and activities relative to the wetlands of the state and protected shorelands under RSA 483-B, conducting field investigations, and holding public hearings. Such fees shall be held by the treasurer in a nonlapsing fund identified as the wetlands and shorelands review fund.

25 Funding Transfer and Repayment. Amend 2007, 269:6 to read as follows:

269:6 Funding Transfer and Repayment. The state treasurer shall transfer \$375,000 from the general fund to the wetlands and shorelands review fund under RSA 482-A:3, III for the biennium ending June 30, 2009. The

governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated. Notwithstanding any provision of law to the contrary, 1/2 of the permit fees collected under RSA [483-B:5-a] 483-B:5-b shall be deposited in the general fund until such time as the \$375,000 is repaid.

26 Repeal and Readoption of Rules.

I. The commissioner of the department of environmental services shall repeal administrative rules chapter Env-Wq 1400 adopted March 24, 2008 pursuant to 2007, 267:11.

II. The commissioner of the department of environmental services shall readopt the administrative rules that were in effect prior to the effective date of the rules repealed under paragraph I. Such rules shall be effective as rules of the department and shall remain in effect until rules are adopted under paragraph III, or are otherwise repealed or amended or have expired in accordance with RSA 541-A.

III. The commissioner of the department of environmental services may adopt rules to be in effect as of October 1, 2008 that are the same as the rules repealed under paragraph I, except that the commissioner shall modify the date references in the rules to take into account the October 1, 2008 effective date. Such rule adoption shall be exempt from the rulemaking provisions of RSA 541-A, provided the commissioner adopts the rules and files them with the office of legislative services prior to October 1, 2008. The rules shall expire on July 1, 2016 unless readopted, amended, or repealed pursuant to RSA 541-A.

IV. The commissioner of the department of environmental services shall prepare, and the director of the office of legislative services shall publish in the rulemaking register, one or more notices, as necessary, to clearly state which rules will be in effect during affected time periods.

27 Repeal. The following are repealed:

I. RSA 483-B:5-b, I(b), relative to permit application fees.

II. RSA 483-B:5-b, III, relative to exemptions from permit application fees.

28 Effective Date.

I. Sections 1 and 5-11 of this act shall take effect upon its passage.

II. Section 27 of this act shall take effect July 1, 2011.

III The remainder of this act shall take effect October 1, 2008.

2008-1510s

AMENDED ANALYSIS

This bill revises the authority and funding for the Pease development authority capital projects in the 2007 capital budget.

This bill extends the reporting dates for the instream flow pilot program.

This bill also changes the effective date for certain provisions of 2007, 267 and 2007, 269, relating to the comprehensive shoreland protection act, from April 1, 2008 to October 1, 2008.

SENATOR KENNEY: Yes, Madam President, I'd like to offer Floor Amendment 1510.

PRESIDENT LARSEN: You may offer that and speak to it as it's being distributed.

SENATOR KENNEY: Thank you, Madam President. The Shoreline Protection Act effective date, I believe is currently April 1st, and we've just voted on a measure for July 15th [sic]. One of the concerns that I've had in my area, much like other Senators have had in their area, is to make

sure that we give the building community and some of the lake owners the ability to fall under the old regulations so that they can build their homes and so the industry can move forward without any glitches. Obviously, it's been a very big nightmare for a lot of builders right now who are dealing with the April 1st deadline, which we know has passed. I've had many builders contact me who suggested that they needed more time when it comes to the new rules. The new rules are going to take a few months to develop. We know that we need to allow the builders to exist under the old law and the old rules, if we're going to allow them to continue to build homes this summer and into the early part – or, excuse me, into the fall. So I offer this amendment to change the effective date to October 1st. And that date was the Senate position when it left this body and went over to the House. And I recall there was a Senator here that I listened to for many years, Sen. Green, he would always say that we need to uphold the Senate position, and the Senate position was an October 1st effective date, and that's the date I think that the Senate should bring over to the House and let them know that we want to support our small business community so that they can go ahead and build homes around the lakes and not have the intrusion of government or over-regulation. Thank you, Madam President.

(The Chair recognized Sen. Foster to speak.)

SENATOR FOSTER: I oppose the floor amendment. Not because I think the October 1st date is a bad date, I don't; I supported it before, and I would again today, if I thought it could happen. People often say "Politics is the art of the possible and also the art of what is probable." I've met with House members who feel very deeply that they believe in the April date. I disagree with them. There are other members of this body who have spoken with them for a long period of time. And I feel confident that while I would like to see October happen, if we want something to occur promptly and quickly, July is the date we ought to send over to that other body. And in speaking with the builders, while I suspect they would probably prefer October 1, what they've said to us is, let us know a date now. If we were to adopt October, I think the best we would get is a Committee of Conference and who knows when that would be resolved. If we move forward with the bill as amended currently, I feel confident this can get resolved as early as next week. And we will have something in place that the builders and the public can rely on, and incidentally, that the Commissioner is also comfortable with. So with that, I would urge the body to oppose this amendment and to move forward with the bill as it's currently amended. Thank you, Madam President.

(The Chair recognized Sen. Gatsas for a question of Sen. Foster.)

SENATOR GATSAS: Sen. Foster, and what do we tell those builders if the reaction from the House is – because obviously the – the story that I heard that happened in Committee, I know would never happen in the Senate Committee, so that discussion, I'm sure, is ready for public hearing, and I'm sure at some point it will be. But what happens if they take this bill, that is very important to the Rye Harbor, and so the same thing to this bill as they did to the bill that we sent them, that I thought was a very important piece of legislation, and they just said no.

SENATOR FOSTER: We'll react to the House when they react in that way. But I feel confident this can move forward and we can resolve this now. And I think this is the best approach.

SENATOR GATSAS: So you feel confident with the guarantee you've gotten from the House leadership that this bill will move forward.

SENATOR FOSTER: I feel confident that with further discussions, this will happen. Yes, I do.

SENATOR GATSAS: Thank you.

(The Chair recognized Sen. Sgambati to speak.)

SENATOR SGAMBATI: Thank you, Madam President. I reluctantly am going to oppose this amendment, even though it was – I originally proposed the October date in committee. Given the fact that it's on a piece of legislation that potentially jeopardizes the fishing industry with the Rye Harbor commercial pier, it's important that this bill go forward. It is clear, given the House actions, that October is not acceptable to them. I'm willing to fight for that if July doesn't go through. But I think that there has been a bit of disregard for what is a really important environmental protection, but the disregard has been for the lake home owners, for the builders, for the towns and cities that are now caught between a rock and a hard place, between a piece of legislation that's passed last year and is implemented, and they don't know how to answer those builders. The education material hasn't been printed 'cause we don't have an effective date. Education sessions were done by DES without clear definitions and things that are still being corrected in this bill. So I think that we've left in limbo a lot of unanswered questions and a lot of people that are either trying to build or make their livings from building, we potentially jeopardize the entire Shoreline [sic] Protection Act, which I think would be an environmental disaster and, in fact, is probably a decade too late, but we need to move going forward. If July is the only way we can move this, I will accept July. But if the House does not accept July, I think we have an obligation to come back over and over and over again until we treat the Lakes communities fairly and give time for this to be implemented sanely so that it's not in jeopardy in the future. Thank you, Madam Chair.

(The Chair recognized Sen. Gatsas for a question of Sen. Sgambati.)

SENATOR GATSAS: Senator, then you must feel as I feel that if there is uncertainty with the House leadership, then I hear you say that we continually do this over and over and over again, we're liable to get to June and not have anything to go over and over and over with. Is your comfort level the same as mine, as a July date may not be acceptable to the House?

SENATOR SGAMBATI: I don't think we have a choice but to go back and negotiate in good faith and to try and get to a place that makes sense for the communities that we represent, and getting an important piece of legislation implemented. So I'm taking the risk that the House will enter that conversation in good faith with us and come to a decision that works.

SENATOR GATSAS: Thank you.

(The Chair recognized Sen. Reynolds to speak.)

SENATOR REYNOLDS: Thank you, Madam President. Madam President, I reluctantly am going to oppose this amendment. I just want to say, for the record, I voted for the Shoreland Protection Act amendments because I thought they were good policy. But after attending a DES work session at Plymouth State University before April 1st and seeing some of my constituents and builders there, I came away confused and concerned about how complex this was becoming. And I also spoke with my builders in my community before April 1st, they were befuddled: How

do we proceed? Do we have to go out to the lake today in the middle of winter and tear down a house in order to be grandfathered? So that's why I felt it was very important and very reasonable, given how complex this has become, to push for the October 1st date. I'm also mindful of the fact that what we have this tied to, in House Bill 1601, is a very important piece of legislation that's time-sensitive for the community at the Seacoast. And I think it's important to be responsible, they have a deadline, as I understand it, of having to have some performance by May 1st or 2nd, which is just next week. My further understanding is that if the House is going to consider concurring with a July 1st date, which is the amendment that will be forthcoming, that that concurrence has to occur on or before next Wednesday. So I think it's reasonable, and I'm not happy about it, but I think it's reasonable to give it a couple of more days to see if there's concurrence. But if there isn't concurrence, I intend to consider seriously a delayed implementation date that may go beyond October 1st. Because our builders, our constituents, need time to understand what it is that we're requiring of them, it's that simple. So I, again, regret that I am not going to support this amendment, but if we don't have concurrence next week, we will address it at that time. Thank you, Madam President.

(The Chair recognized Sen. Hassan to speak.)

SENATOR HASSAN: Thank you, Madam President. I rise also in reluctant opposition to Sen. Kenney's amendment, but I just want to reiterate that the reason I do so is I think the best chance we have of a quick resolution of what the effective date is, is going ahead with the July 1st date, and I want my colleagues to remember that. If we were to go to an October 1st deadline, the chance that this will play out for the rest of the legislative session, and our builders up there will have no idea of when the effective date is going to be, is very large. So that's why I'm supporting the bill as it is currently amended and I will oppose Sen. Kenney's amendment. Thank you.

(The Chair recognized Sen. Gatsas for a question of Sen. Hassan.)

SENATOR GATSAS: Sen. Hassan, I'm looking at the summary of testimony received in Capital Budget, and I'm looking to understand what the sensitive date was that was discussed.

SENATOR HASSAN: Which date?

SENATOR GATSAS: I think I heard that there was a sensitive date –

SENATOR HASSAN: There is a sensitive date, within the original bill.

SENATOR GATSAS: Correct.

SENATOR HASSAN: Yes. And would you like me to address that?

SENATOR GATSAS: If you would.

SENATOR HASSAN: It's my understanding, from the testimony we received in Capital Budget, was that the Pease Development Authority currently has contracts with builders to rebuild the pier in Rye, and that those contracts have a set price until May 2nd, and that after May 2nd there is an escalator of sorts. So that the time sensitivity here is that we want to get the piers – this bill passed so that we will be locking in this price.

SENATOR GATSAS: Follow-up? So your understanding is, is that this bill will be signed before May 2nd?

SENATOR HASSAN: That's certainly what we're trying to do here.

SENATOR GATSAS: Follow-up. If the understanding is, is that the House doesn't come in until May 1st, which is next week, how do we get this bill done by May 2nd?

SENATOR HASSAN: I believe we have plans underway to do that, and we will do our best to do that, because this is very important.

(The Chair recognized Sen. D'Allesandro to speak.)

SENATOR D'ALLESANDRO: Thank you, Madam President. This is a difficult situation because all of us are aware of a couple of things. First of all, that our builders are very concerned about this, and a number of meetings have taken place, and the October date was the date that we wanted; through these discussions everyone seemed to have agreed on the July date, and that's why the July date is on the first amendment to the bill. But with reference to the sensitivity of the bill, I've been speaking with Mr. Cummings, who is the person who's in charge of the Rye Pier. They have a contract in place, or a potential contract in place, that as of the 2nd of May there's an escalator clause because of the increased cost of steel. And I asked him to call Rep. Wyler, who was the prime sponsor of this bill, to get an expedited situation with regard to the House. I've spoken with the chairman of the Public Works Committee in the House, Candace Bouchard; she has assured me that they will work diligently to get this done. I think everyone is concerned about the pier, and everyone is concerned about shoreline. As a result of that, the process can be expedited. We have fast-tracked bills in the past; this could follow that same process. It's the enrolled bills process that really has to take place, and we have to get this moving. I think this is another example, though, of the Senate doing its job and living up to its commitments. And we were sensitive to the fact that we had to compromise. We all wanted October, but it's July that we settled on. In that vein, the House should live up to their portion of the deal, and that's what we're banking on. We're co-equal branches in this process, and if the people give their word, they should live up to their word. And I think that's what we're banking on as we move forward, so that everybody gets done what they need to get done at this point in time. So that's the issue with regard to the sensitivity of the date, the May date, and also with regard to the sensitivity of the July date. Thank you, Madam President.

(The Chair recognized Sen. Gatsas for a question of Sen. D'Allesandro.)

SENATOR GATSAS: Senator, I appreciate the additional knowledge you have on the project. Can you tell me what the additional cost the escalated clause is calling for?

SENATOR D'ALLESANDRO: No, he didn't, he didn't tell me. What he did say, though, is the price of steel continues to rise at quite a dramatic rate, and they need this done by the date that I mentioned. But he didn't tell me what the escalator was. But I'm sure – look it, if I might just elaborate. Rice, in California, went from \$20 a bag to \$40 a bag; that's what's happening to the inflationary cycle as we speak. I bought a gallon of milk and I paid what, I paid two-something; now I'm paying four dollars.

SENATOR GATSAS: Four dollars and twelve cents.

SENATOR D'ALLESANDRO: That's how dramatically the prices are rising, as we speak, and I think we have to be cognizant of that. That's the best I can do, Senator Gatsas.

SENATOR GATSAS: Thank you.

(The Chair recognized Sen. Barnes for a question of Sen. D'Allesandro.)

SENATOR BARNES: My question to you is, would you believe, that I've been here a few years and I haven't seen always this promise from across the hall. I'm not saying they're fibbing, but I'm saying that sometimes there are folks over there – and I know there's at least one over there who is adamant that this bill is not going to pass. Now, I don't know how much support that Representative has; she's been around a long time and she does have a lot of allies. So I'm not so sure the promise that was made to you by the Speaker, or whomever you made the speak with, is in place, Sen. D'Allesandro. I'm very nervous that that certain Representative can rally enough votes over there to squash it. What do you think about that?

SENATOR D'ALLESANDRO: Well, thank you very much for the "Would you believe." I didn't speak to the Speaker, I spoke to Candace Bouchard who's the chairman of the Public Works Committee. I have 100 percent faith in Candace Bouchard, and if she says she'll do something, I've worked with her on many issues over the course of this Session, and I have great faith in her ability to deliver.

SENATOR BARNES: I agree with you, Senator. I have the utmost faith in her, too, but as I said earlier, she's not the one individual over there that's against this bill. I understand that, she's one vote. That lady is one vote, she's not a hundred and ninety-nine. And I trust her, I trust her, too.

SENATOR D'ALLESANDRO: Well, we'll – the "proof will be in the pudding," Sen. Barnes.

SENATOR BARNES: I'm afraid you're right.

Sen. Gottesman moved the question.

Without objection, the Chair moved to close debate.

(The Chair recognized Sen. Gatsas as the final speaker on the bill.)

SENATOR GATSAS: Thank you, Madam President. There's no question that what's before us is two very important pieces of legislation. One is to extend that date, and the other is the Rye Harbor. We are truly looking around to make sure we're going to trust our colleagues on the other side of that wall that the May 1st date is met, so that May 2nd doesn't come and there's an increased cost to doing that harbor. 'Cause that wouldn't be fair to the taxpayers of this great state. We as a Senate agreed October 1st was the right date. We are now saying we're going to give you 45 days, probably, by the time you have an opportunity to understand what's happening July 1st. I think again we're hoping that the House does our work. It's been clear what we sent for a message, it's been very clear that October 1st was the right date, was the date that builders could deal with and work with. But now we're taking another project and we're throwing it in that mix. And we've already heard, and I applaud Sen. D'Allesandro for doing the research to say the May 2nd date, 'cause we never heard it in Committee. Sen. Green merely said he was waiting for a signature. And I'm sure, if he's listening to this testimony on this bill, he's getting quite nervous that we're taking a piece of legislation and attaching it to the legislation for the Rye Harbor that is very controversial right now. So we're putting the Rye Harbor at risk, 'cause if they hold us up in the House, past the 2nd, we have a serious problem. And I understand Sen. Foster's saying that we will attach the October date many times to many bills until we get it the way that the

Senate believes it should be done. We should send a strong message and say October 1st is the date we believe it should happen. Thank you, Madam President.

The question is on the adoption of Floor Amendment 1510s.

PARLIAMENTARY INQUIRY

SENATOR KENNEY: Parliamentary Inquiry. Thank you, Madam President. If I believe the Senate needs to uphold [sic] its effective date of October 1st, 2008 position; if I further believe that we should not be held hostage by the House on our Senate position; if I should further believe that we should support our lake-building community with a reasonable timeline with the new Shoreline [sic] Protection law; and if I further believe that our position should be taken to the House and that the House position should not be taken to the Senate, would I vote for Floor Amendment 1510? Thank you, Madam President.

PRESIDENT LARSEN: If you are for House Bill [sic] 1510, you would vote yes; if you oppose it, you would vote no.

The question is on the adoption of Floor Amendment 1510s.

A roll call was requested by Sen. Kenney, seconded by Sen. Barnes.

The following Senators voted Yes: Gallus, Kenney, Odell, Roberge, Bragdon, Clegg, Gatsas, Barnes, Letourneau, Downing.

The following Senators voted No: Reynolds, Sgambati, Burling, Cilley, Janeway, Kelly, Gottesman, Foster, Larsen, DeVries, D'Allesandro, Estabrook, Hassan, Fuller Clark.

Yeas: 10 - Nays: 14

Floor Amendment 1510s failed.

The question is on the adoption of Ought to Pass as Amended on HB 1601-FN-A.

A roll call was requested by Sen. Foster, seconded by Sen. Gottesman.

The following Senators voted Yes: Gallus, Reynolds, Kenney, Sgambati, Burling, Cilley, Janeway, Odell, Roberge, Kelly, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, DeVries, Letourneau, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.

The following Senators voted No: None.

Yeas: 24 - Nays: 0

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

RESOLUTION

Sen. Foster moved that the Senate adjourn from the Early Session, that the business of the Late Session be in order at the present time, that all bills and resolutions ordered to Third Reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

Motion to adjourn adopted.

Adjournment from the Early Session.

LATE SESSION**Third Reading and Final Passage**

HB 91-FN, relative to lobbyist registration and statements, repealing the restriction on simultaneous employment and public service, and relative to regulation of volunteer public service.

HB 172-FN, relative to state meat inspection.

HB 285, relative to voting machines.

HB 581-FN, relative to the penalty for purposely mistreating service animals.

HB 666-FN, relative to the immunizations included for reimbursement in the animal population control program.

HB 858-FN, relative to a discount medical plan organization.

HB 1129, relative to special number plates for municipal police department vehicles.

HB 1157, relative to requirements for approval of village plan alternative subdivisions.

HB 1244, relative to auditable basis policies.

HB 1294, establishing the offense of public urination or defecation.

HB 1297, relative to licenses for aquaculture issued by the fish and game department.

HB 1313, relative to voting by the chairman of the retirement system board of trustees.

HB 1338, establishing an arboviral illness task force and relative to mosquito control and abatement.

HB 1351, relative to fish and game license and registration agents.

HB 1352, relative to the comprehensive state development plan.

HB 1378, relative to insurance taxes and fees.

HB 1394-FN, relative to procedures for approvals of nursing education programs.

HB 1448-FN, relative to documents prepared by the department of transportation and reimbursement fees for such documents.

HB 1601-FN-A, relative to funding for certain capital projects of the Pease development authority.

HB 1604-FN, relative to the electronic toll collection system.

ANNOUNCEMENTS**RESOLUTION**

Sen. Foster moved that the Senate recess to the Call of the Chair for the sole purpose of scheduling hearings, sending and receiving messages, processing enrolled bill reports and amendments and forming Committees of Conference.

Motion to recess adopted.

The Senate is in recess to the Call of the Chair.

**CORRECTION FROM APRIL 24, 2008 (JOURNAL 14)
(ENROLLED BILL AMENDMENTS)**

**April 29, 2008
2008-1562-EBA
03/01**

Enrolled Bill Amendment to HB 1295

The Committee on Enrolled Bills to which was referred HB 1295
AN ACT establishing a commission to study issues relating to storm-water.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to HB 1295

This enrolled bill amendment corrects certain references in the bill.

Enrolled Bill Amendment to HB 1295

Amend subparagraph I(i) of section 2 of the bill by replacing line 1 with the following:

(i) A representative of the Home Builders & Remodelers Association of

Amend subparagraph I(q) of section 2 of the bill by replacing line 1 with the following:

(q) A member of the New Hampshire Timberland Owners Association, appointed by

Adopted.

**April 25, 2008
2008-1527-EBA
05/09**

Enrolled Bill Amendment to HB 1382

The Committee on Enrolled Bills to which was referred HB 1382
AN ACT adopting the uniform prudent management of institutional funds act.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to HB 1382

This enrolled bill amendment makes technical corrections.

Enrolled Bill Amendment to HB 1382

Amend section 2 of the bill by replacing line 2 with the following:
RSA 188-D:42, II to read as follows:

Amend the introductory paragraph of RSA 292-B:4, I as inserted by section 1 of the bill by replacing line 8 with the following:
circumstances, and shall consider the following factors:

Adopted.

April 29, 2008
2008-1563-EBA
05/01

Enrolled Bill Amendment to HB 1569-FN

The Committee on Enrolled Bills to which was referred HB 1569-FN AN ACT relative to the use of drugs on wildlife.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to 1569-FN

This enrolled bill amendment makes a technical correction.

Enrolled Bill Amendment to 1569-FN

Amend RSA 207:8-c, IV by replacing lines 1-2 with the following:

IV. This section shall not be construed to limit employees or agencies of the state or the United States, or local animal control officers or licensed wildlife rehabilitators in the performance of

Adopted.

April 30, 2008
2008-1631-EBA
03/01

Enrolled Bill Amendment to HB 1601-FN-A

The Committee on Enrolled Bills to which was referred HB 1601-FN-A AN ACT relative to funding for certain capital projects of the Pease development authority, relative to reporting dates for the instream flow pilot program, and relative to certain requirements under the comprehensive shoreland protection act.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to HB 1601-FN-A

This enrolled bill amendment corrects certain references in the bill.

Enrolled Bill Amendment to HB 1601-FN-A

Amend RSA 483-B:4, XVI(c) as inserted by section 6 of the bill by replacing line 7 with the following:

30 days after the effective date of this subparagraph.

Amend RSA 483-B:4, XVI(c) as inserted by section 16 of the bill by replacing line 8 with the following:

New Hampshire and delivered to the commissioner 30 days after the effective date of this subparagraph.

Amend section 23 of the bill by replacing lines 1-2 with the following:

23 Rulemaking. Amend RSA 483-B:17, X to read as follows:

X. Procedures and criteria for permitting under RSA ~~483-B:5-a~~
483-B:5-b, including

Adopted.

April 29, 2008
2008-1501-EBA
04/09

Enrolled Bill Amendment to HB 1631-FN

The Committee on Enrolled Bills to which was referred HB 1631-FN AN ACT relative to the state purchase of biodiesel fuels.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to HB 1631

This enrolled bill amendment makes 2 technical corrections.

Enrolled Bill Amendment to HB 1631-FN

Amend RSA 21-I:11, II-a as inserted by section 1 of the bill by replacing line 2 with the following:

RSA 362-A:1-a, I-b, except if such product is unavailable or is more costly than a 100 percent petroleum

Amend RSA 228:24-a, II as inserted by section 2 of the bill by replacing line 2 with the following:

biodiesel, as defined in RSA 362-A:1-a, I-b, except if such fuel is unavailable or is more costly

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in its amendments to the following entitled House Bills sent down from the Senate:

HB 315, relative to criminal background checks of prospective municipal employees through the division of state police.

HOUSE MESSAGE

The House of Representatives has voted to withdraw **House Address 1**, *for the removal of Patricia C. Coffey, superior court justice, from office*, from the Joint Committee of Address and Laid it on the Table.

HOUSE MESSAGE

The House of Representatives has referred for Interim Study the following entitled Bills sent down from the Senate:

SB 396, relative to the establishment of a statewide transportation policy.

SB 518-FN, relative to agricultural restricted covenants.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bills sent down from the Senate:

SB 303-FN, relative to special number plates.

SB 326-FN, relative to salaries for certain unclassified positions.

SB 347, establishing a commission to study making changes to the New Hampshire accountancy act.

SB 349, allowing continuation of judicial retirement plan benefits for judges called to full-time active military duty.

SB 371, making various changes to the city of Manchester employees' contributory retirement system.

SB 376, requiring local fire chiefs to annually inspect all school buildings within his or her jurisdiction and report on the condition of all such school buildings.

SB 442-FN, requiring that the proceeds of fees for motions to appear in court pro hac vice be paid into the law library revolving fund.

SB 444, relative to settlements on behalf of minors and judgments and decrees in favor of minors.

SB 446, allowing probate court judges and district court justices to sit on either court in certain circumstances.

SB 447, eliminating obsolete provisions regarding pleas by mail and non-computerized courts.

SB 449, relative to the status of emergency services volunteers.

SB 462, limiting liability for overseers of public welfare when acting in the course of their official duties.

SB 466, relative to probate court jurisdiction over special needs trust.

SB 486, relative to the duties and responsibilities of special deputy forest rangers.

SB 489, establishing a commission to study erecting a fire tower on Copple Crown mountain in Brookfield.

SB 506, naming the Elm Street bridge in Newport after Specialist Justin A. Rollins.

SB 523, relative to requirements for the estuary alliance for sewage treatment to take and hold land.

SB 525, establishing the first Saturday in May as Emergency Medical Services Provider Recognition Day.

SB 542, relative to a mediated settlement dispute in the town of Rye.

SCR 10, urging the New Hampshire delegation to actively seek an increase in federal funding for wastewater treatment facility improvements.

HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in the passage of the following entitled Bills sent down from the Senate:

SB 385, requiring pharmacies to report an inability to fill prescriptions.

SB 452, relative to transportation planning.

SB 524, relative to eligibility for persons to receive the elderly property tax exemption.

SB 543, establishing a commission to study court security.

HOUSE MESSAGE

The House of Representatives has voted to Lay On The Table the following entitled Bill(s) sent down from the Senate:

SB 436, enabling certain persons to vote in primaries prior to turning 18 years of age.

SB 537, relative to allowing the commissioner of the department of employment security to participate in a joint local employment dynamics program with the United States Census Bureau and the Bureau of Labor Statistics.

REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bill(s):

HB 415-FN, establishing a geothermal assessment project.

HB 1153, relative to physician assistants and physicians regulation by the board of medicine.

HB 1155-FN-A, making an appropriation of certain revenues to the board of nursing.

HB 1167, relative to substituting generically equivalent drug products.

HB 1186, reducing the membership of 2 legislative oversight committees.

HB 1215, relative to the New Hampshire-Vermont interstate waste compact.

HB 1239, relative to the legislative youth advisory council.

HB 1341-FN-A, making an appropriation to the department of administrative services for an energy audit and system evaluation of the state house.

HB 1377, relative to New Hampshire's rest areas and welcome centers.

HB 1584-FN-A, creating a commission to study the recycling and disposal of electronic waste.

HJR 11, requesting the United States Department of Agriculture to provide redress for price reporting errors in milk prices.

SB 325-FN-A, relative to child care provider reimbursement rates.

SB 431, naming a small impoundment in Goffstown as Namaske Lake.

Sen. D'Allesandro moved adoption of Report of Committee on Enrolled Bills.

Committee Report adopted.

REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bill(s):

HB 211-FN, requiring that driver's license applicants be informed of and examined on laws relating to blind pedestrians.

HB 717, allowing municipalities to establish local community services and care planning boards.

HB 1181, naming the Manchester district courthouse the Armand Capistran district courthouse.

HJR 10, urging congress to allow for the interstate sale of state inspected meat and poultry.

SB 142, relative to the regulation of real estate brokers and salespersons by the real estate commission.

SB 322, relative to lists of professional bondsmen.

SB 347, establishing a commission to study making changes to the New Hampshire accountancy act.

SB 360, relative to local enforcement of the state building code.

SB 364, relative to vehicle weight tolerance.

SB 367, relative to the date of the final property tax bill in municipalities that bill quarterly.